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AFRICA

LABOUR LAWS IN AFRICA



LABOUR LAWS IN AFRICA

The world will welcome, between now and 2050, another 2.2 billion people. More than half of that population growth will occur in Africa, according to the United Nations' population report.

The continent claims other significant titles: The region boasts the globe's youngest population, four of the world's fastest growing economies in Africa, rapid urbanisation (second only to Asia) and an expanding consumer class. As populations, cities and economies burgeon, so does the demand for employment, infrastructure and services, accelerating the rise of second-tier industries in markets that once focussed, almost exclusively, on commodities.

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According to the World Bank, no country has ever reached middle income status without first going through urbanisation. At first glance, this correlation bodes well for Africa but developed cities typically undergo a surge of industrialisation before urbanisation.

Africa presents a different case: Its cities' evolution is predominantly occurring in reverse, with urbanisation running ahead and industrialisation lagging far behind. Bridging the gap will be a mammoth task - a task befitting the Fourth Revolution's novel solutions. Although keeping pace with Africa's growing wants, needs and demands will fall on governments, they cannot do it alone.

Countries will need to attract large-scale foreign and intra-African investment to achieve ambitious urban plans. Fortunately, the interest is mutual: Multinationals, first-movers and entrepreneurs are looking to reap the gains of the world's next emerging economies.

The publication is updated periodically (and not as and when legal developments occur). This edition reflects the legal position as at January 2019. This guide is published for general information purposes and is not intended to constitute legal advice. Our specialist legal advice should always be sought in relation to any particular situation. This introductory chapter is intended as a high-level overview of 15 countries within the African continent. Please feel free to contact us if you require information regarding any particular area of law. ©

While it's safe to make broad statements about Africa's growth and largely untapped potential, prudent investors appreciate the more nuanced reality: The continent boasts 54 jurisdictions, each with its own political landscape, tax regime and regulations. Often underestimated, labour law issues are fundamental considerations for companies looking to set up business in Africa.

When it comes to hiring, transferring and letting go employees, each of Africa's jurisdictions requires employers to navigate a unique labour law nexus. This guide provides an employment law overview of 15 of the continent's key jurisdictions. Due diligence does not end there. Companies looking to launch or expand their African reach should consult with one of our leading labour experts to determine how labour laws specifically apply to, and impact, their business plans and ambitions. Without such specialist analysis and strategy, companies risk taking one step forward and three steps back.



Africa boasts vast investment potential.

The World Bank affirms the continent's upward trajectory, identifying six African countries among the world's top ten growing economies and predicting the continent's

**EXPECTED
GROWTH RATE
IN 2020 OF
3.1%.**

This, in a continent that continues to underutilise its talent pool, according to the World Economic Forum's Human Capital Index. While Africa captures 55% of its human capital potential, the global average stands considerably higher at 65%. It is no surprise then that analysts expect 2018 to bring a spike of foreign investment and cross-border transactions to Africa.

While expanding into Africa presents corporates with great opportunities, such strategic moves present challenges too. An often underestimated one: the different and heavily regulated labour law frameworks within the African continent. This guide aims to lessen this burden, unpacking the labour law nuances within 15 key development jurisdictions: Angola, Botswana, Democratic Republic of Congo, French Congo, Ghana, Kenya, Lesotho, Mauritius, Mozambique, Namibia, Nigeria, Rwanda, Swaziland, Tanzania and Zambia.

By shining a spotlight on each of these jurisdictions, our team directs employers through key milestones, such as hiring and termination. This guide also addresses employees' status after a business transfer and employers' data privacy obligations.

Failure to adhere to even one jurisdiction's labour legislation can result in wasted resources, cost implications and, at worst, the collapse of entire cross-border transactions. Plans that start well, end well. Companies looking to increase their reach in Africa need to perform a comprehensive labour law analysis, clocking problematic jurisdictions and highlighting the advantages afforded by others. Our team has the expertise and know-how to guide you through this important process. We hope this guide will act as catalyst for a more in-depth discussion with our team about your business' African footprint.



ANGOLA

Official language(s):

Portuguese

Population (approx.):

31m

Unemployment rate (2018):

19.9%

Name of court for labour matters:

Labour Court

Are pre-employment checks permissible?

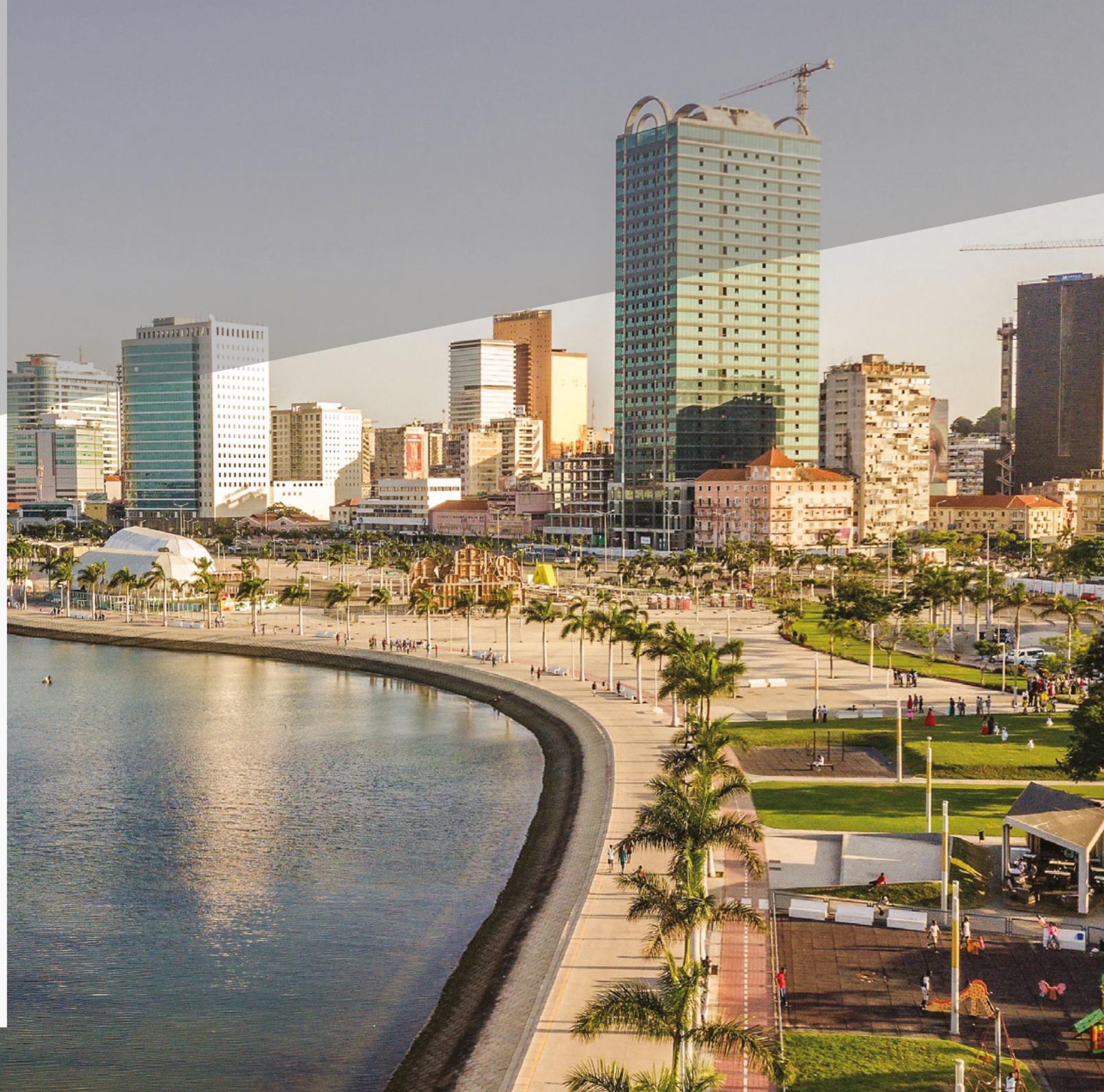
Yes

Dismissal for misconduct: is there a requirement for procedural and substantive fairness?

Yes

Immigration: must foreign employees obtain a work visa?

Yes





BACKGROUND

Applicable legislation

- Constitution of the Republic of Angola, 2010
- “Angolanisation Principle” (referred to as the 70/30 rule)
- New General Labour Law (7/15) of 2015 (NGLL)
- Collective Bargaining (Law No 20–A/92)

Regulatory rating

 *Heavily regulated.*



THE MINIMUM WORKING AGE IN ANGOLA IS 14 YEARS.



HIRING DECISIONS

Pre-hire checks

May employers conduct pre-hire checks?

Employers may conduct pre-hire checks before hiring employees. The employer is permitted to conduct pre-employment checks to ensure that the employee is suitable for the job. Pre-hire checks that include the submission by the employee of medical records (including vaccination cards), criminal records, drug screening, social media and credit checks if necessary.

It does, however, require the potential employee's consent and voluntary submission.

HIV/AIDS testing is not permitted, unless it is required due to the nature of job.

Hiring options

What hiring options are available to employers?

Hiring options include:

- National or foreign resident employee; and
- Foreign non-resident or expatriate employees. These employees are subject to complicated immigration processes and the employment of such persons are limited depending on the size of the company.

Immigration

Do foreign employees require permits to work and which visas may be obtained to allow foreigners to work?

Foreign employees require a visa in order to work in Angola. The contract of employment will be void if the foreign employee does not obtain a visa.

There are also limitations placed on the employment of foreign labour in Angola. For example, where a company employs more than five workers the company may only employ a certain percentage of foreign non-resident individuals. The employer will also be required to demonstrate that there are no available Angolan nationals to employ with the required skill.

Are there any limitations placed on employers' discretion to determine new hires?

Local nationals in Angola are given preference when determining new hires.

Employers are also prohibited from discriminating, in any form, when it comes to determining new hires. The minimum working age in Angola is 14 years.



IS THERE A MINIMUM WAGE REQUIREMENT?

YES.

THE NATIONAL MINIMUM WAGE IS SET ACCORDING TO INDUSTRY SECTOR.

CONDITIONS OF EMPLOYMENT

Are there any formality requirements attached to employment contracts, eg written format and/or signed?

Not all employment contracts have to be in writing. However, there are certain contracts, for example contracts with foreign employees, fixed-term contracts and training contracts, which must be reduced to writing.

Employers are also subject to document retention obligations. For example, employers are required to keep records of the payroll list or payslips. Employers are also required to keep tax and social security payment forms.

Probation

Can a probation period be used, and if so, is there a maximum prescribed period of probation?

Yes. The probationary period is capped at a maximum period of 60 days. The parties can agree, in writing, to reduce or exclude the probationary period. Further, the parties

can increase the period in writing up to four months for highly qualified workers who perform complex jobs and up to six months for workers who perform jobs of high technical complexity or have management functions.

Minimum employment rights?

Are any employees excluded from minimum employment rights?

Yes, public officials and those who perform casual work, family work and commercial operations where they assume their own risk are excluded. Public employees, occasional workers and employees hired permanently by diplomats and consular representatives of other countries are also excluded.

Is there a minimum wage requirement?

Yes. The national minimum wage is set according to industry sector. For example, a national minimum wage has been set for commerce and mining, for agriculture and for transport, services and manufacturing.

What are the standard or maximum working hours? Are there prescribed minimum resting periods during the normal working day/week?

The maximum working hours are 44 hours a week and eight hours a day. A week includes Monday to half day Saturday. All employees are entitled to 45 to 90 minutes break on each working day. Employees should not work for more than five consecutive hours without a break.

What are the minimum requirements relating to overtime?

The overtime requirements are dependent on the size of the company. In Angola the size of the company is discussed within the context of micro, small, medium and large companies. The Labour Laws are differentiated based on the size of the company.

Overtime work is calculated as follows:

- 50% additional payment of normal working time for 30 hours and 75% when they exceed this limit, for large companies;

- 30% additional payment of normal working time for 30 hours and 45% when they exceed this limit, for medium-sized companies;
- 20% additional payment of normal working time for 30 hours and 20% when they exceed this limit, for small-sized companies; and
- 10% additional payment of normal working time for 30 hours and 10% when they exceed this limit, for micro-companies.

What are the minimum requirements relating to annual leave?

Employees are entitled to 22 days paid holiday leave which is calculated on the employee's base salary.

What are the minimum requirements relating to sick leave?

There is no limit on the number of sick leave days. Employees who work in medium-sized and large companies will receive full pay for the first two months of sick leave and 50% of their salary from the third month up to the 12th month of sick leave.

What are the minimum requirements relating to parental leave, and does it apply to both parents or only mothers?

Employees are entitled to 90 days paid maternity leave. Although, there is no specific paternity leave, fathers are only entitled to one day of absence for the birth of each child.

What are the minimum requirements relating to family responsibility leave (if any)?

Employees are entitled to eight paid family responsibility days per year.



ALL EMPLOYEES ARE ENTITLED TO 45 TO 90 MINUTES BREAK ON EACH WORKING DAY.

Are employees automatically entitled to bonus payments?

Bonus is paid out in terms of annual vacation allowance, Christmas allowance and family allowance.

Changing terms and conditions of employment

Are employees automatically entitled to periodic increases, alternatively how do the parties normally achieve consensus on increases?

Not expressly provided for in labour legislation.

Can employment terms be changed without achieving agreement with the employees?

Yes.

Are employees commonly represented in their interactions with employers relating to changes to employment terms?

Yes.

SOCIAL BENEFITS, TAX AND PENSIONS

Workplace injuries

In the event of workplace injury/disease, will employees be entitled to some form of compensation?

Although self-employed persons are excluded, formally employed persons are entitled to compensation for workplace injury namely 100% salary for the first 30 days of temporary incapacity due to a workplace injury and 75% salary thereafter. For permanent injuries, employees may be entitled to up to 70% salary for 12 months as compensation. The employer bears the total costs through insurance premiums.

Return to work

Are employers obliged to reintegrate workers into the workplace after having recovered from workplace injuries?

The employee has a right to return if they have been temporarily incapacitated by accident or illness, as soon as medically authorised.



ANGOLA HAS UNIVERSAL PRIMARY MEDICAL COVERAGE PROVIDED BY THE GOVERNMENT.

Medical aid benefits

Are employers obliged to provide employees with membership to medical aids or other assistance with medical costs outside of the context of workplace-related injury or disease?

Angola has universal primary medical coverage provided by the Government.

Taxation

What are the employer's obligations in respect of employee income tax, and what are the maximum personal tax rates that are applicable?

Salaries paid are subject to two legal deductions. These include, income related tax (IRT) and social security contributions. The IRT rate depends on the amount of the employee's salary.

Other social benefits

What other employee social benefits must the employer either contribute to or deduct from employee contributions?

There is an 11% contribution from the employee's salary for social security. The employer is required to pay 8% of the employee's gross salary and the employee 3%.

DATA PRIVACY

What data privacy obligations (if any) rest on employers in respect of their employees?

Employers are entitled to look into the employee's social media use, only insofar as the employer needs to ensure the employee does not disclose confidential information about the company that could hurt the business of the employer. This is in line with Angolan data protection laws and website rules. Although there is no explicit protection, the right to privacy is protected in terms of the Constitution.

BUSINESS TRANSFERS

Are employees automatically transferred to a new employer in the event of transfer of a business as a going concern?

Yes. However, the sale or transfer of a business may lead to termination of contracts of employment provided the employees are given notice within 22 days following the sale or transfer.

Is consultation or information disclosure required prior to transfer, and if so, who must be consulted/receive information, and what disclosures must be made?

The new employer must serve a written notice to the relevant employees' representative body (ie a union committee) or, in its absence, directly to the employees, 22 business days prior to the transfer, informing the employees that they must claim their accrued benefits.

Joint and several liability for employers?

During the 12 months from the sale, the new and old employer are jointly liable.

Is it possible to change terms and conditions of employment in the context of a business transfer?

No. The new employer is also obliged to maintain the same working conditions unless the employer and the employee agree otherwise.

Briefly describe the seriousness of consequences in the event of non-compliance

Not explicitly stated.



TERMINATION OF EMPLOYMENT

Introduction

Termination for misconduct

Articles 50 and 51 of the New General Labour Law sets out the disciplinary process to be followed. An interview (disciplinary hearing) must be conducted if dismissal is considered. The disciplinary process includes the issuance of a simple reprimand for minor offences an employee and his/her representative are invited to a disciplinary interview in respect of serious offences and the employee is entitled to present a defence to the allegations and proposed dismissal (ie the right to be heard).



WHAT NOTICE PERIODS ARE APPLICABLE?
AT LEAST A 30-DAY PERIOD PRIOR TO DISMISSAL.

What notice periods are applicable?

The following disciplinary process is set out:

- Setting up an inquiry prior to the disciplinary procedure with a duration of no longer than eight days in the cases where either the infraction or its author is not sufficiently determined.

Modification on the list of applicable disciplinary measures on the disciplinary infractions made by employees, which now are:

- a) oral admonishment;
 - b) written admonishment;
 - c) temporary salary reduction; and
 - d) disciplinary termination.
- Possibility of the employee to be accompanied during his interview by up to three witnesses or trusted people.
 - Possibility of the employer to apply immediately a disciplinary measure should the employee not be available for contact within 10 working days for reasons related to the infraction made.

What are the dispute resolution mechanisms?

There is an obligation to precede any individual labour dispute with mediation (with involvement of the Labour Authorities), reconciliation (with intervention of the Public Prosecution) and arbitration (using two arbitrators appointed by the parties and a third party chosen by the arbitrators appointed by the parties).

If these routes fail, an employee can approach a labour court, which is the only competent forum to declare a dismissal unlawful.

What remedies are available to employees?

Compensation and/or reinstatement.

Is third party approval for termination/ termination documents required?

Disciplinary action can take up to 30 days to take effect and in that time, the workers' representatives (if any) must be notified.

Termination for incapacity

Per the recent amendment to the Angolan Labour Law, an employee can only be dismissed based on an objective economic reason or a serious breach justifying discipline by the employee that makes the employment relationship difficult to continue.

The law does provide for the temporary transfer of jobs or lower function when an employee faces temporary disability such as an illness.

What notice periods are applicable?

At least a 30-day period prior to dismissal.

What are the dispute resolution mechanisms?

Only the courts are competent to declare a dismissal unlawful.

What remedies are available to employees?

In the event the court finds the dismissal unlawful, the employee shall be entitled to be compensated, and/or reinstatement.

Is third party approval for termination/ termination documents required?

N/A.



Termination for operational requirements

The employer must prove the reasons for dismissal on the basis of operational requirement. When dismissing for operational requirements, the employer must serve an initial redundancy notice on both the union committee and the Ministry of Labour and carry out a mandatory information and consultation process with all parties concerned. The employer must also serve a final collective termination notice on the employees.

What are the dispute resolution mechanisms?

Under the new General Labour Law (7/15), employment disputes may be resolved through:

- conciliation before the Public Attorney's Office with the competent provincial labour court;
- mediation before the General Inspectorate of Labour; or
- voluntary arbitration.

What remedies are available to employees?

The remedy available to the employee depends on the size of the company. If the dismissal is found to be unfair, the employees are entitled to compensation equivalent to notice pay and one month's salary for every year the employee worked up to five years of seniority and then 50% of the salary for each additional year worked by the employee. Employees can also request reinstatement.

Is there any third-party approval for termination/termination documents?

A 30-day or 60-day redundancy notice must be served on the workers' representative body for individual redundancy (depending on the type of worker(s)). The notice shall include the reasons for termination for operational reasons, the jobs affected and the ability or inability to transfer these workers. The workers' representatives thereafter have seven days to respond.

Termination benefits

Are any termination benefits payable in the event of a dismissal for misconduct?

Yes. The employee would be entitled to payment *in lieu* of notice and all accrued benefits.

Are any termination benefits payable in the event of a dismissal for incapacity?

Yes. The employee would be entitled to all accrued benefits.

Are any termination benefits payable in the event of a dismissal for operational requirements?

Under the General Labour Law (7/15) this would depend on the size of the company. For large-sized employers who hire more than 200 employees, compensation corresponds to the basic salary at the terminate date multiplied by the number of years of seniority (five year maximum/limit) and then increased by 50% of the basic salary multiplied by the number of years in

excess of the five-year limit. For medium-sized companies (between 100 and 200 employees), the basic salary is multiplied by a maximum of three years and increases by 40% of the basic salary multiplied by the number of years of seniority exceeding the three years of service. For small-sized companies hiring between 10 and 100 employees, the compensation corresponds to two basic salaries at the date of termination increased by 30% of the basic salary multiplied by the years of service – to a maximum limit of two years of service.

Further, employees are entitled to notice pay and one-month salary for every year up to five years of seniority and then 50% of salary for each additional year.

Are any termination benefits payable in the event of voluntary resignation by an employee?

This is not explicitly provided for in the law. Only compensation for termination of employment, retirement, not integrating, bankruptcy, insolvency and redundancy are provided for.

Are any termination benefits payable in the event of retirement?

At retirement, an employee is entitled to 25% of their base salary multiplied by each year of completed years of service.



**WHAT IS THE NORMAL RETIREMENT AGE?
60 FOR MEN
AND 60 FOR
WOMEN.**

RETIREMENT

What is the normal retirement age?

60 years old for men and 60 years for women as well (but can be reduced by one year for each child – so a woman's retirement age may be 55 years old).

POST-TERMINATION RESTRAINTS

Enforceability of non-compete provisions

Can contractual non-compete provisions be enforced?

Non-compete clauses for a maximum period of three years can be enforced under certain circumstances. Firstly, the employee must consent, therefore, in order for the non-compete to be enforced it must be reduced to writing in the employment contract and the employee must be paid compensation during the maximum three-year period allowed for non-compete contracts. Further, the activity or work must be capable of causing damage to the employer.

Generally, non-compete agreements depend on the reciprocal payment of compensation during the period. The compensation is determined by agreement. It is very important that non-compete provisions can only be included in the contract of employment if the employee consents and can only be established for a maximum period of up to three years.

Confidentiality and trade secrets

What protections are offered to employers in respect of their confidential information/trade secrets?

Employers are protected in terms of the General Labour Laws (7/15). Civil action can be instituted against the employee in this respect. Employees have a duty of loyalty and may not divulge confidential information in relation to the industrial property and trade secrets that are not commonly known. Employers have the option to protect confidential information through non-disclosure contracts.



BOTSWANA

Official language(s):

English, Tswana

Population (approx.):

2m

Unemployment rate (2018):

18.1%

Name of court for labour matters:

Industrial Court

Are pre-employment checks permissible?

Not regulated

Dismissal for misconduct: is there a requirement for procedural and substantive fairness?

Not in terms of legislation but courts require procedural and substantive fairness

Immigration: must foreign employees obtain a work visa?

Yes, long-term work visas are awarded using a points system





BACKGROUND

Applicable legislation

- Employment Act, No, 29 of 1982
- Employment (Amendment) Act, No 6 of 2010
- Employment (Amendment) Act, No 10 of 2010
- Workers Compensation Act, No 23 of 1998
- Trade Disputes Act, No 15 of 2004
- Immigration Act, No 3 of 2011

Regulatory rating

✓ *Heavily regulated.*

HIRING DECISIONS

Pre-hire checks

May employers conduct pre-hire checks?

The employment legislation does not forbid pre-hire checks. Some employers do conduct pre-employment screening to check employment history and the criminal record of an employee prior to hiring or confirming the appointment of an employee.

Hiring options

What hiring options are available to employers?

There are four types of employment contracts, namely, contracts of employment for an:

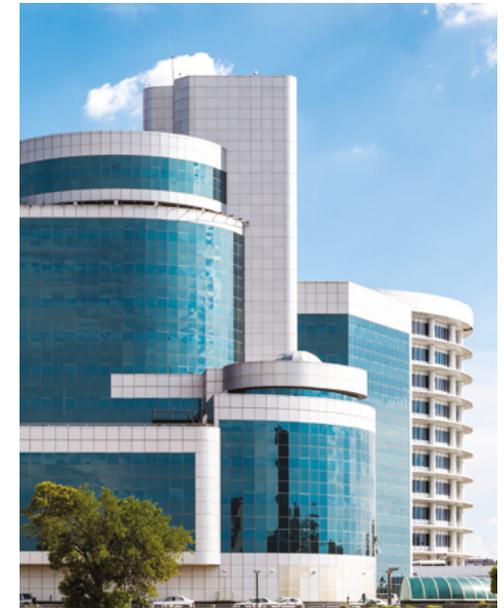
- unspecified period of time (or permanent employment);
- specified period of time/fixed-term contract;
- specified piece of work; and
- “casual employee”.

Immigration

Do foreign employees require permits to work and which visas may be obtained to allow foreigners to work?

Persons from visa exempt countries (including South Africa) can travel to Botswana for a period of 90 days without making any pre-arrangements; in order to undertake business prospective, to pursue networking opportunities and to attend conferences and business meetings.

Applications for long-term work permits are assessed using a points system. Points are awarded for fluency in English and



Setswana (the dominant local language), the applicant’s professional qualifications, the strength of the employer’s motivation to employ a foreigner and the scarcity of the applicant’s skills. An applicant must achieve a score of 60 in order to obtain a long-term work permit, which will then be valid for up to five years, depending on the duration of the employment contract.

Are there any limitations placed on an employers’ discretion to determine new hires?

Before a long-term work permit may be awarded to an applicant in relation to a particular position, the vacancy must be advertised in a local newspaper in an attempt to find a local person with the necessary skills.

CONDITIONS OF EMPLOYMENT

Are there any formality requirements attached to employment contracts, eg written format and/or signed?

Contracts of employment may be oral or in writing, expressed or implied. A "worker" in terms of the Workers Compensation Act refers to any person who has entered into a contract of employment. There are no formal requirements regarding the manner in which an offer must be made and/or accepted.

Special contracts must be reduced to writing and the employee must indicate their consent either by signing or affixing the impression of their thumb or finger to the contract.



SKILLED EMPLOYEES MAY BE SUBJECTED TO A MAXIMUM PERIOD OF 12 MONTHS' PROBATION.

Probation

Can a probation period be used, and if so, is there a maximum prescribed period of probation?

Unskilled employees may be subjected to a maximum period of three months' probation. Skilled employees may be subjected to a maximum period of 12 months' probation.

Minimum employment rights?

Are any employees excluded from minimum employment rights?

Government employees – except those who belong to a category of government officers who are declared to fall within the ambit of the definition of employee in the Employment Act.

Is there a minimum wage requirement?

The Minimum Wages Advisory Board and the Minister set minimum wages in relation to certain categories of employment that are specified in a schedule in the Employment Act.

What are the standard/maximum working hours? Are there prescribed minimum resting periods during the normal working day/week?

The ordinary working hours of employees may not be more than eight hours in any one day or more than 48 hours in any one week.

An employee is entitled to at least 24 consecutive hours of rest which shall ordinarily be, or include, a Sunday in every period of seven consecutive days. Where the employee is engaged on shift work, the employee shall be granted a rest period of 30 consecutive hours.

What are the minimum requirements relating to overtime?

Subject to the power of the relevant minister to exempt certain industries or undertakings from this section, an employee shall not be permitted to work overtime for more than 14 hours in any one week. If an employee works overtime, they are to be remunerated at 1.5 times the normal wage rate.

What are the minimum requirements relating to annual leave?

An employee shall accrue annual leave at a rate of 1.25 days per month. Of the 15 working days' leave earned in respect of any 12-month period, at least eight days leave must be taken no later than six months immediately after the end of the period in which the leave was earned.

What are the minimum requirements relating to sick leave?

An employee is entitled to 20 working days of paid sick leave for any one year

of continuous service. An employee must inform their employer of their absence (due to illness) as soon as it is reasonably practicable to do so. If they are absent for 24 hours or more, they must provide a certificate signed by a medical officer or other evidence to the employer's satisfaction accounting for the entire period of the absence.

What are the minimum requirements relating to parental leave, and does it apply to both parents or only mothers?

Section 113 of the Employment Act deals with maternity leave. Female employees must give their employers notice, by way of a written certificate from a qualified person, certifying that the employee's final stages of pregnancy and due date will probably take place within six weeks. The employer must then immediately permit the employee to go on maternity leave until the expiry of six weeks immediately after her pregnancy.

Section 113(4) of the Employment Act provides that should a female employee suffer an illness arising out of her pregnancy during her maternity leave that renders her unfit to return to work, she may extend her maternity leave to eight weeks.

Section 118(1) of the Employment Act provides that a female employee shall be

entitled to nurse or otherwise feed her child for half an hour twice a day or for one continuous hour during the hours of work for six months immediately after her return to work. The employee remains entitled to her full pay notwithstanding these feeding breaks.

No legislative provision exists with respect to paternity leave.

What are the minimum requirements relating to family responsibility leave (if any)?

This is not provided for in Botswana's employment legislation.

Are employees automatically entitled to bonus payments?

This is not an automatic entitlement for employees but at the discretion of the employer. Particulars of an employee's wages in terms of the contract of employment may specify bonus payments.

Changing terms and conditions of employment

Are employees automatically entitled to periodic increases, alternatively how do the parties normally achieve consensus on increases?

This is not a statutory right but may be provided for in the contract of employment.



AN EMPLOYEE SHALL NOT BE PERMITTED TO WORK OVERTIME FOR MORE THAN 14 HOURS IN ANY ONE WEEK.

Can employment terms be changed without achieving agreement with the employees?

The employer should negotiate with the employees under all circumstances where a change of their employment terms is proposed by the employer.

In the event of an employee's (or all the employees') refusal to sign new contracts of employment embodying the changed terms of employment, the employer may, under certain circumstances, unilaterally amend such terms and conditions of employment.

Are employees commonly represented in their interactions with employers relating to changes to employment terms?

Yes, this is the case as collective labour agreements entered into between trade unions and employers often regulate terms and conditions for registered employees.

SOCIAL BENEFITS, TAX AND PENSIONS

Workplace injuries

In the event of workplace injury/disease, will employees be entitled to some form of compensation?

Sections 13 to 17 of the Workers Compensation Act requires an employer to compensate any worker or employee who was temporarily or permanently disabled as a result of an injury at work or who contracted a listed occupational disease or to compensate such a worker or employee's dependent in the case of a deceased employee whose death resulted from an injury or occupational disease contracted at the workplace.

Return to work

Are employers obliged to reintegrate workers into the workplace after having recovered from workplace injuries?

There is no obligation to reintegrate workers who have recovered from a workplace injury.

Medical aid benefits

Are employers obliged to provide employees with membership to medical aids or other assistance with medical costs outside of the context of workplace-related injury or disease?

Section 35(1) of the Employment Act provides that where an employee is to perform work in an area within Botswana where medical facilities are not readily

available, the employer (at its own cost) shall provide reasonable medical facilities to the employee and every member of their family who the employer has agreed may accompany them.

Where an employee falls ill and it appears necessary that they should be admitted to hospital, the employer shall provide suitable transport to the nearest hospital.

Taxation

What are an employer's obligations in respect of employee income tax, and what are the maximum personal tax rates that are applicable?

Section 80 of the Employment Act deals with authorised deductions from wages. Section 80(a)(i) provides an employer may deduct from an employee's wages, any tax or rate imposed by law.

Other social benefits

What other employee social benefits must the employer either contribute to or deduct from employee contributions?

Section 80(a)(ii) of the Employment Act provides that an employer may deduct from an employee's wages, any contribution to any provident, pension fund or scheme, that is owed by the employee to the employer.

Employees who will receive a gratuity or a pension at the end of their contract of employment are not entitled to an additional severance benefit. That is, in addition to any pension pay-outs.



DATA PRIVACY

What data privacy obligations (if any) rest on employers in respect of their employees?

Currently Botswana does not have any legislative provision relating to the data privacy of employee information. Notwithstanding this, art8 of Botswana's Constitution recognises the right to privacy, as a fundamental right and freedom.



**BOTSWANA'S
CONSTITUTION
RECOGNISES THE
RIGHT TO
PRIVACY,
AS A FUNDAMENTAL
RIGHT AND FREEDOM.**

Further, every employer is obliged to keep such records, books and accounts in respect of employees employed by him/her as may be prescribed and every employer shall, at all reasonable times, afford every facility to the Commissioner or any labour officer for the examination of such records, books and accounts.

BUSINESS TRANSFERS

Are employees automatically transferred to a new employer in the event of transfer of a business as a going concern?

Section 28(2) of the Employment Act provides that when a company takes over the business of the employer, the new employer shall continue to fulfil the obligations under the contracts of employment. The section essentially provides that the new employer substitutes the obligations of the employer they have replaced.

Is consultation or information disclosure required prior to transfer, and if so who must be consulted/receive information, and what disclosures must be made?

Section 48 of the Employment Act provides that when an employee's contract of employment is transferred from one employer to another, the employee shall consent and the labour office must certify that the employee freely consented to the transfer.

Joint and several liability for employers?

If a business or enterprise is transferred from one person to another and an employee continues to be employed therein, the period of continuous employment immediately preceding the transfer shall be deemed, for the purposes of Employment Act, to be part of the employee's continuous employment with the transferee immediately following the transfer.

Is it possible to change terms and conditions of employment in the context of a business transfer?

A new employer requires the consent of the new employees where it intends modifying their prior terms and conditions of employment to create parity between existing and new employees. This is only necessary, however, where the new terms are less beneficial or more onerous than those previously in operation.

What are the consequences in the event of non-compliance?

Not provided for expressly in the employment legislation.

TERMINATION OF EMPLOYMENT

What are the statutory obligations and procedures for terminating a contract of employment?

Employment may be terminated on the basis of an employee's misconduct, incapacity or the employer's operational requirements. The general rule is that an employer must have a valid reason to terminate an employee's employment.

Termination for misconduct

What fair process requirements exist?

Although the Employment Act and the Trade Disputes Act do not explicitly require the existence of a valid reason and/or a fair procedure for an employee to be lawfully dismissed on the basis of misconduct, the Industrial Court nevertheless insists that dismissals must be procedurally and substantively fair.

The employee who faces discipline must thus be given reasonable notice of the time and place the employer intends of holding a disciplinary enquiry as a result of the misconduct. Further, the employee must be informed of the nature of the charge or charges against them and be given the option of being assisted or represented at the enquiry by a co-employee of their choice.

What substantive fairness requirements exist?

The employee should be entitled to question any witness who testified against them. The employee must further be entitled to give evidence personally and call their own witnesses.

In the event of being found guilty of the alleged misconduct, the employee must be given a further opportunity of putting forward facts in mitigation before a sanction is decided on.

What are the dispute resolution mechanisms?

Section 18 of the Trade Disputes Act provides that the Industrial Court has the responsibility of settling trade disputes such as wrongful termination. The court has exclusive jurisdiction in every matter relating to trade disputes (except over disputes of interest), industrial action and review of mediator decisions.

What remedies are available to employees?

If found guilty and after a sanction has been imposed, the employee should be informed of their right to appeal against such findings and/or sanction. If the dismissal is held to be wrongful, the employee could be entitled to reinstatement and/or compensation. However, if the case relates to incorrect disciplinary action, only just compensation as a remedy is available.

Is third party approval for termination/ termination documents required?

Where the employee is guilty of serious misconduct, an employer may terminate any contract of employment, without giving notice of its intention to do so or making any payment.

Termination for incapacity

What fair process requirements exist?

In the context of incompetence, substantive fairness means that the employee must be shown to have performed poorly.

An employer may only terminate an employee's employment on grounds of ill-health or disability if the employee is no longer capable of performing her duties. Termination on grounds of ill-health constitutes termination on the basis of incapacity.

What substantive fairness requirements exist?

Before an employee can be dismissed due to poor performance, the standards of performance expected of them should be communicated to them clearly and they must be given a reasonable time to improve their performance in accordance with the requisite standards.

What are the dispute resolution mechanisms?

Application to the Industrial Court in terms of s20 of the Trade Disputes Act to adjudicate the dispute.

What remedies are available to employees?

Section 24 of the Trade Disputes Act provides reinstatement and/or compensation as the primary remedies available to employees.

Is third party approval for termination/ termination documents required?

This is not required.

Termination for operational requirements

What fair process requirements exist?

Once the decision has been made by an employer to reduce its workforce, the employer is obligated to give written notice of its intention to do so to the Labour

Commissioner and any employees likely to be directly affected or impacted. Employers are further required to engage with employees (and any recognised union) in a consultation process. Not complying with these requirements renders an employer liable to a penalty.

What substantive fairness requirements exist?

The FILO or “first-in-last-out” principle applies to the extent that it is reasonably practicable. What is reasonably practicable is qualified by the obligation of the employer to take operational efficiency and the ability, experience, skill and occupational qualifications of each employee into account.

What are the dispute resolution mechanisms?

Application to the Industrial Court.

What remedies are available to employees?

Employees will be given preferential employment for a period of six months post termination. The Court can also award just compensation for wrongful retrenchment.

Is third party approval for termination/ termination documents required?

The decision to reduce or reorganise one’s workforce is considered to fall within the ambit of an employer’s managerial prerogative. No third-party approval for termination is thus provided for.

Notice requirements

Once the decision has been made by an employer to reduce its workforce, the employer is obligated to give written notice of its intention to do so.



Termination benefits

Are any termination benefits payable in the event of a dismissal for misconduct?

Upon the termination of a contract of employment, for whatever reason (including death or retirement), the employer is liable to pay to an employee who has been in continuous employment with them for 60 months or more.

Severance benefits are not payable should the employee be entitled to the payment of a pension in respect of the period of employment under the contract.

Are any termination benefits payable in the event of a dismissal for incapacity?

Upon the termination of a contract of employment, for whatever reason (including death or retirement), s27 of the Employment Act provides that the employer shall pay to an employee who has been in continuous employment with them for 60 months or more.

Severance benefits are not payable should the employee be entitled to the payment of a pension in respect of the period of employment under the contract.



EMPLOYEES WILL BE GIVEN PREFERENTIAL EMPLOYMENT FOR A PERIOD OF SIX MONTHS POST TERMINATION.





ENFORCEABILITY OF NON-COMPETE PROVISIONS.

Are any termination benefits payable in the event of a dismissal for operational requirements?

Section 27 of the Employment Act provides that when the contract of employment terminates, the employer is liable to pay to an employee who has been in continuous employment with them for 60 months or more.

Severance benefits are not payable should the employee be entitled to the payment of a pension in respect of the period of employment under the contract.

Are any termination benefits payable in the event of voluntary resignation by an employee?

As above, s27 of the Employment Act provides that upon the termination of a contract of employment, for whatever reason, the employer is liable to pay to an employee who has been in continuous employment with them for 60 months or more.

Severance benefits are not payable should the employee be entitled to the payment of a pension in respect of the period of employment under the contract.

Are any termination benefits payable in the event of retirement?

Upon the termination of a contract of employment, for whatever reason (including death or retirement), the employer is liable to pay to an employee who has been in continuous employment with them for 60 months or more. (Section 27 of the Employment Act).

Severance benefits are not payable should the employee be entitled to the payment of a pension in respect of the period of employment under the contract.

RETIREMENT

What is the normal retirement age?

The Employment Act does not indicate any obligatory retirement age. The Old Age pension for public sector employees is set at 65 years old.

POST-TERMINATION RESTRAINTS

Enforceability of non-compete provisions.

Can contractual non-compete provisions be enforced?

Restraint of trade agreements are *prima facie* valid and anyone seeking to resist their enforcement must prove that the agreement restraining their ability to trade and to work is unreasonable and therefore against public policy.

Confidentiality and trade secrets

What protections are offered to employers in respect of their confidential information/trade secrets?

Section 26(4) of the Employment Act provides that an employer can summarily dismiss (dismissal without notice) an employee for the wilful disclosure of confidential information or trade secrets where such disclosure is likely to be detrimental to the interests of the employer.



DEMOCRATIC REPUBLIC OF CONGO

Official
language(s):

French

Population
(approx.):

84m

Unemployment rate
(2018):

46%

Name of court for
labour matters:

Labour Court

Are pre-employment
checks permissible?

Yes

Dismissal for
misconduct: is there
a requirement for
procedural and
substantive fairness?

Yes

Immigration: must
foreign employees
obtain a work visa?

Yes, a foreigner is required
to apply for a General Work
Permit or Special Skills
Work Permit





BACKGROUND

Applicable legislation

- Constitution of the 18 February 2006
- Labour Code, Loi No 015/2002 ("Labour Code")
- Decree No 08/40 of 30 April 2008
- Employee's Compensation Act, No 23 of 1998
- Ordonnance du 9 juin 1966 portant Sécurité sociale - Liste des maladies professionnelles ("Decree of 9 June 1966 on Professional Illness")
- Institut National de Sécurité Sociale (INSS) ("Social Security Decree")

Regulatory rating

✓ *Heavily regulated.*

HIRING DECISIONS

Pre-hire checks

May employers conduct pre-hire checks?

This is not prohibited and most labour agents in the country do conduct pre-hire checks.

Hiring options

What hiring options are available to employers?

The hiring options available to employers are governed by the Labour Code. The Labour Code recognises two types of contracts, namely:

- fixed-term employment contract; and
- indefinite period contract.

Immigration

Do foreign employees require permits to work and which visas may be obtained to allow foreigners to work?

Before a foreigner is accepted to take up employment in the Democratic Republic

of Congo ("DRC") they are required to have a valid work permit. Applications for work permits are submitted with the relevant authorities in the DRC. In practice, a foreigner enters the DRC holding a general entrance visa. After entry, the foreigner can then apply for a work permit. There are two kinds of work permits that can be granted to non-DRC citizens. These are:

- Visa d'établissement de travail ("General Work Permit" or "VET"); and
- Visa d'établissement de travail - catégorie spécifique ("Special Skills Work Permit" or "VETS").

Are there any limitations placed on employers' discretion to determine new hires?

Foreigners who want to work and reside in the DRC require a residence permit in addition to the work permit.



CONDITIONS OF EMPLOYMENT

Are contracts of employment required?

An employment contract may be oral or reduced to writing.

Are there any formality requirements attached to employment contracts, eg written format and/or signed?

The Labour Code defines an “employment contract” as any agreement that is written or oral.

If the contract is in writing a copy must be handed to the employee two days before signature.

Probation

Can a probation period be used, and if so, is there a maximum prescribed period of probation?

The Labour Code provides that every employment contract can be accompanied by a probation period. Where a contract includes a probation period it must be in writing and may not exceed a period of six months, depending on the work the employee would be performing.

Minimum employment rights?

Are any employees excluded from minimum employment rights?

Not outlined in the legislation.

Is there a minimum wage requirement?

The minimum wage in the DRC is governed by Decree No 08/40 of 30 April 2008. The new minimum wage across the country was set at Fr1,120 (Congolese Francs) (US\$2) starting 1 June 2008 and went up to Fr1,680 (Congolese Francs) (US\$3) on 1 January 2009.

What are the standard/maximum working hours? Are there prescribed minimum resting periods during the normal working day/week?

An employee’s work hours may not exceed 45 hours per week and eight hours per day. However, it does not include the time required for the employee to travel to and from work.

Every employee is entitled to, in each period of seven days, a minimum of 24 hours of continuous rest. This rest must at all possible times be granted to all employees at the same time. It usually takes place on Sundays. However, collective agreements may provide for special conditions.



AN EMPLOYMENT CONTRACT MAY BE ORAL OR REDUCED TO WRITING.



What are the minimum requirements relating to overtime?

Hours worked beyond the standard hours of work are considered overtime and entitles an employee to an increase in remuneration corresponding with the number of extra hours worked.

What are the minimum requirements relating to annual leave?

An employee is entitled to annual leave after a years' continuous service. Leave is calculated in relation to the employee's age. Workers who are older than 18 years old earn one day of leave for every month served. Therefore, if an employee older than 18 years has worked for a year they will only be entitled to 12 days leave in that year. Employees who are under the age of 18 earn one and half days leave for every month worked. Therefore, an employee who is under the age of 18 will be entitled to 18 days leave for the year. The number of leave days increases with one day with every five years that the employee has worked for the same employer or a substitute employer.

What are the minimum requirements relating to sick leave?

An employer is only required to pay up to 15 days sick leave per year.

What are the minimum requirements relating to parental leave, and does it apply to both parents or only mothers?

Every female employee is entitled to 14 consecutive weeks maternity leave which is calculated as follows:

- six weeks leave before the birth of the baby; and
- eight weeks after the birth of the baby.

No legislative provision exists with respect to paternity leave.

What are the minimum requirements relating to family responsibility leave (if any)?

Every employee is entitled to the following "circumstance leave":

- three business days for their marriage;
- two business days for a male whose wife is delivering a child;
- four business days for the death of the spouse, or a parent combined with 1st degree;
- one business day for the marriage of a child; and
- two business days for the death of a relative in the second degree.

Are employees automatically entitled to bonus payments?

This is at the employer's discretion but may be included as a term in the contract of employment.

Changing terms and conditions of employment

Are employees automatically entitled to periodic increases, alternatively how do the parties normally achieve consensus on increases?

This has to be provided for in the contract of employment.

Can employment terms be changed without achieving agreement with the employees?

The Labour Code does not make any reference to varying terms and conditions of employment but these would be included in the employment contract by way of variation clause or in a collective agreement between the employer and the relevant trade union(s). The terms and conditions of employment can only be varied after the employer has engaged with the employee(s) through sufficient consultation.

Are employees commonly represented in their interactions with employers relating to changes to employment terms?

Yes. Employees are represented along with many workers subscribing to the National Union of Congolese Workers, which often negotiates with employers.



AN EMPLOYER IS ONLY REQUIRED TO PAY UP TO 15 DAYS SICK LEAVE PER YEAR.



THE EMPLOYER MUST DEDUCT TAX FROM AN EMPLOYEE'S WAGES.

SOCIAL BENEFITS, TAX AND PENSIONS

Workplace injuries

In the event of workplace injury/disease, will employees be entitled to some form of compensation?

Where an employee is unable to provide their services as a result of disease or accident, that employee retains the right, for the duration of the suspension of the contract, to two-thirds of their salary and all of their family allowances.

If the illness or injury is deemed to be an occupational disease or resulting from an accident which occurred at the workplace, the employee retains the right to be remunerated for two-thirds of their salary and all of their family allowances, for the first six months of the suspension of the contract due to incapacity.

Return to work

Are employers obliged to reintegrate workers into the workplace after having recovered from workplace injuries?

No, this is not provided for in the employment legislation.

Medical aid benefits

Are employers obliged to provide employees with membership to medical aids or other assistance with medical costs outside of the context of workplace-related injury or disease?

Section 160 of the Labour Code provides that all employers are required to provide medical services to all its employees. Employers are further required to have medical staff and facilities on site.

Taxation

What are an employer's obligations in respect of employee income tax, and what are the maximum personal tax rates that are applicable?

The employer must deduct tax from an employee's wages. Services rendered by non-residents are subject to withholding tax.

Other social benefits

What other employee social benefits must the employer either contribute to or deduct from employee contributions?

Article 4 of the Social Security Decree provides an obligatory system of social security covering social benefits for work-related accidents or illness, pensions, and family allowance. The social security contribution due by the employer on a monthly basis is calculated based on the legal minimum wage or on the basis of the actual wage of the employee. A total amount of 21.2% of the employee's wage must be paid as the contribution to the social security system.

DATA PRIVACY

What data privacy obligations (if any) rest on employers in respect of their employees?

Employers are obliged to keep records, accounting books and accounts in respect of employees employed by them. A labour inspector reserves the right to examine these records, books and accounts to verify compliance with the provisions of the Labour Code and/or any other government decree/directorate.

BUSINESS TRANSFERS

Are employees automatically transferred to a new employer in the event of transfer of a business as a going concern?

Whenever an employer is substituted with another employer through a merger or secession, all contracts of employment which are in force on the day of the substitution with remain in force with the new employer.

Is consultation or information disclosure required prior to transfer, and if so who must be consulted/receive information, and what disclosures must be made?

The law merely provides that the new employer takes the place of the old employer in relation to all existing employment contracts. There is no requirement to inform or consult the employees prior to the transfer of the business.

Joint and several liability for employers?

The receiving or new employer is jointly and severally liable with regards to the obligations towards employees before the transfer, if the employee submits a claim within one year from the date of transfer.

Is it possible to change terms and conditions of employment in the context of a business transfer?

No, the Labour Code prohibits an employer from directing their employees to conclude a further employment contract with another employer.

What are the consequences in the event of non-compliance?

Not provided for in the law.



THE EMPLOYER HAS THE RIGHT TO INVESTIGATE THE ALLEGED MISCONDUCT.

TERMINATION OF EMPLOYMENT

What are the statutory obligations and procedures for terminating a contract of employment?

When the employment contract between the employer and employee ends for any reason whatsoever, the employer must issue a certificate to the employee stating the nature and duration of the services provided by the employee, commencement and termination dates and all the benefits due to the employee as well as the registration number of the contract at the National Institute of Social Security.

Termination for misconduct

What fair process requirements exist?

Where an employer wishes to terminate the employment of the employee as a result of gross misconduct, the employer must notify the employee of this desire to terminate the employment contract within 15 days of the discovery of the facts constituting the gross misconduct.

Where there is no gross misconduct, the employer must notify the employee of this desire to terminate the employment contract. Either party may terminate the contract upon giving the following notice: where the employee has been continuously employed for one year or more, one month's notice; where the employee has been continuously employed for more than six months but less than one year, a fortnight's notice; or where the employee has been continuously employed for less than six months, one week's notice.



What substantive fairness requirements exist?

The employer has the right to investigate the alleged misconduct.

What are the dispute resolution mechanisms?

The Labour Courts preside over all labour disputes in the DRC. A dispute can also be referred to the labour officer who may refer it to the Labour Court at a later stage.

What remedies are available to employees?

An employee may terminate the employment contract where the employer commits any of the listed acts of gross misconduct. If an employer breaches the contract of employment and the other party suffers any loss they may claim damages from the other party. These damages will be calculated in accordance

with the remuneration that the party would have received had the breach not occurred.

Is third party approval for termination/ termination documents required?

No.

Termination for incapacity

What substantive fairness requirements exist?

The employee must be unable to be employed in their original position and no other job is available that is considered appropriate for their medical condition, or if the employee refuses to accept a job offered by the employer without good reason.

What are the dispute resolution mechanisms?

Approaching the labour officer or Labour Court.

What remedies are available to employees?

Compensation for damages and loss of income. The court may also order re-instatement.

Is third party approval for termination/ termination documents required?

Certification by a medical practitioner.

Termination for operational requirements

What fair process requirements exist?

The Labour Code provides that an employer may retrench employees for economic reasons or for structural purposes.

An employer is required to consult with their employees by sending notice to them or their representatives, at least 15 days prior to any measures being taken. The employees' representatives are then required to submit their alternative suggestions to the employer.

What substantive fairness requirements exist?

An employer is required to retrench employees with lower skills first and where the employees are equally qualified they must first retrench younger employees. Seniority increases by one year for every year the employee has been employed by the employer. The employer must also consider whether the employee has any minor dependants.

What are the dispute resolution mechanisms?

The Labour Courts preside over all Labour disputes in the DRC.

What remedies are available to employees?

Where an employee has been retrenched they retain preferential hiring in the same job category for one year. Accordingly, should the employer seek to hire an employee with the same or similar qualifications as the retrenched employee, he must first offer the employment to the retrenched employee.

Is third party approval for termination/ termination documents required?

A labour inspector must ensure before implementation of the retrenchment that the employer has followed the prescribed procedure and has applied the selection criteria properly. The labour inspector must notify the employer in writing if the employer failed to follow the correct procedure.

Notice requirements

An employer is required to consult with his employees by sending notice to them or their representatives.

Termination benefits

Are any termination benefits payable in the event of a dismissal for misconduct?

The Act does not contain any provisions for a severance package.

Are any termination benefits payable in the event of a dismissal for incapacity?

The Act does not contain any provisions for a severance package.

Are any termination benefits payable in the event of a dismissal for operational requirements?

Article 49 of the former Labour Code of 1962 provided that an employee whose employment has been terminated may be paid a "termination allowance" if the contract or collective agreement so provides. We therefore presume that employees will still be entitled to severance pay when their employment contracts are terminated based on operational requirements if their employment contracts or collective agreements provide for it.

Are any termination benefits payable in the event of voluntary resignation by an employee?

The Act does not contain any provisions for severance packages.

Are any termination benefits payable in the event of retirement?

The Labour Code does not contain any provisions relating to severance pays or benefits in this regard. It would be best practice for a collective agreement entered into between the parties to contain provisions for voluntary severance packages or a provision which allows an employer to offer early retirement to employees who are close to retirement age to minimise the effect of retrenchments.



**AN EMPLOYER IS
REQUIRED TO
CONSULT WITH
HIS EMPLOYEES BY
SENDING NOTICE TO THEM
OR THEIR REPRESENTATIVES.**



**THE EMPLOYMENT
CONTRACT
TERMINATES
AUTOMATICALLY
AFTER THE EMPLOYEES HAS
REACHED THE PRESCRIBED
RETIREMENT AGE.**

RETIREMENT

What is the normal retirement age?

The retirement age is set at 65 for men, and 60 for women. The employment contract terminates automatically after the employee has reached the prescribed retirement age.

POST-TERMINATION RESTRAINTS

Enforceability of non-compete provisions

Can contractual non-compete provisions be enforced?

The Labour Code does not make any reference to restraints of trade. Restraint of trade agreements may not therefore be enforceable as it may amount to effectively removing employees from the economically active population.

Confidentiality and trade secrets

What protections are offered to employers in respect of their confidential information/trade secrets?

The Labour Code does not make any reference to protection of confidential information. However, the Constitution provides that all persons have the right to privacy and confidentiality and this would apply to employers and their information.





ETHIOPIA

Official language(s):

Amharic

Population (approx.):

112 535 065

Unemployment rate (2018):

19.30%

Name of court for labour matters:

Labour Division of the Regional First Instance Court/
Labour Division of Appellant Court/
Labour Division of the Federal Court

Are pre-employment checks permissible?

Yes, save for HIV/AIDS testing

Dismissal for misconduct: is there a requirement for procedural and substantive fairness?

Yes

Immigration: must foreign employees obtain a work visa?

Yes, foreign employees must obtain clearance from the Ministry of Foreign Affairs



BACKGROUND

Applicable legislation

- Labour Proclamation No. 42/1993;
- Labour Proclamation No 377/2003 (Labour Proclamation);
- Trade Practices Proclamation No. 329/2003 (Trade Practices Proclamation);
- Overseas Employment Proclamation No. 923/2016 (Overseas Employment Proclamation);
- Termination of Employment Convention No. 158 (Termination Convention); and
- Right to Organise & Collective Bargaining Convention No. 98 (Right to Organise & Collective Bargaining Convention).

Regulatory rating

✓ Heavily regulated.

HIRING DECISIONS

Can employers conduct pre-employment checks?

In terms of section 92 (5) of the Labour Proclamation, an employer must “arrange, according to the nature of the work, at his own expense, for the medical examination of newly employed employees and for those engaged in hazardous work, as may be necessary”.

In addition, in terms of section 14 (2)(d) of the Labour Proclamation, it shall be unlawful for an employee to refuse to submit themselves for medical examination where required by law or an employer on good cause. Testing for HIV/ADS is excluded from the ambit of section 14 (2)(d) of the Labour Proclamation.

What hiring options are available to employers?

The following hiring options are available to employers:

- Contracts for an indefinite period; or
- Contracts for a definite period or a specified piece work.

Are fixed-term contract of employment allowed?

Yes. In terms of section 10 of the Labour Proclamation, a contract of employment for a definite period or for a defined piece of work may be concluded in, *inter alia*, the following instances:

- performance of a specified piece of work;

- replacement of an absent employee;
- performance of work under abnormal work pressure;
- performance of urgent work to prevent damage or disaster to life or property, or to repair defects or break downs;
- irregular work which relates to a permanent part of the work, but which is performed at irregular intervals; or
- seasonal work which relates to the permanent part of the work of an employer, but is performed only for a specified period of the year which is regularly repeated in the course of a number of years.

A fixed-term contract for the replacement of an employee who has suddenly and permanently vacated a post, or for the temporary replacement of an employee to fill a vacant position in the period between the study of the organizational structure and its implementation, may be concluded for a period not exceeding forty-five (45) consecutive days, without the option to renew. All contracts of employment shall be deemed to have been concluded for an indefinite period except for those that comply with the provisions of section 10 of the Labour Proclamation.



EMPLOYEES MAY WORK A MAXIMUM OF FORTY-EIGHT (48) HOURS A WEEK AND EIGHT (8) HOURS PER DAY.

IMMIGRATION

Are there any limitations placed on employers' discretion to determine new hires

Foreign employees need to comply with immigration legislation and the requirements to obtain the necessary clearance from the Department of Foreign Affairs. However, the Minister of Foreign Affairs shall consult with the appropriate Government Department to determine whether or not there are enough Ethiopian citizens available to perform the work or to occupy the post of the foreign employee.

CONDITIONS OF EMPLOYMENT

Are there any formal requirements for employment contracts?

In terms of section 6 of the Labour Proclamation, a written contract of employment must specify the following:

- the name and address of the employer;
- the name, age, address and work card number, if any, of the employee;
- the agreement of the contracting parties which includes the elements set out in section 4 of the Labour Proclamation, i.e.: the nature of the work to be performed, the rate of wages and the manner of their calculation and the rights and obligations of both parties; and
- the signature of the contracting parties.

Where the contract of employment has not been reduced to writing, the employer must furnish the employee with written particulars/a statement of employment within fifteen (15) days of the conclusion of the contract of employment. A failure to

reduce a contract of employment to writing does not deprive employees of their rights in terms of the Labour Proclamation.

Are probationary periods permitted in Ethiopia?

Yes. In terms of section 11 of the Labour Proclamation, an employee may be placed on probation with the purpose of testing his suitability for a role. Where parties agree to a probation period, the agreement must be reduced to writing, may not exceed forty-five (45) consecutive days and may not be concluded with an employee who has been re-employed by the same employer for the same job.

Unless the law, work rules or a collective agreement provides otherwise, the employee shall, during the probation period, have the same rights and obligations of an employee who has completed the probation period. During the probation period the contract may be terminated by either party without notice. Where an employee continues to work after the expiry of a probation period, a contract of employment for an indefinite period is deemed to have been concluded, effective from the commencement of the probation period.

Minimum employment rights

Are any employees excluded from minimum employment rights?

In terms of section 3(2) of the Labour Proclamation, specific employment relationships are excluded from the application of the Labour Proclamation, i.e.: contacts of the purpose of upbringing, treatment, care or rehabilitation.

Is there a minimum wage requirement?

Ethiopia does not have a national minimum wage. There is however a specified minimum wage for public sector employees which is approximately \$21 per month.

What are the maximum working hours?

Employees may work a maximum of forty-eight (48) hours a week and eight (8) hours per day. The Minister of Labour and Social Affairs (Minister) may issue directives reducing normal hours of work for economic sectors, industries or specific occupations where there are special conditions of work. A reduction of working hours by way of an order from the Minister shall not entail a reduction in the wages of employees. Hours of work should be spread evenly throughout the week unless the nature of the work requires more than the normal hours on a particular day, provided that the extension on any particular day does not exceed two (2) additional hours in excess of the maximum eight (8) hour working day.

Employees between the ages of 14 and 18 may not work more than seven (7) hours per day and may not perform overtime or night work.

What are the minimum requirements relating to overtime?

In terms of section 67 of the Labour Proclamation, overtime may only be worked where an employer cannot be expected to resort to other measures and only where there is:

- Accident, actual or threatened;
- Force-majeure;
- Urgent work; and/or

- Substitution of absent employees assigned on work that runs continuously without interruption.

Overtime shall not exceed two (2) hours a day, twenty (20) hours a month or one hundred (100) hours in a year. Payment for overtime work shall be affected on the day fixed for wage pay day. Overtime is payable as follows:

- For work performed between 6am and 10pm – 1.25 times the employee's ordinary hourly rate;
- For work performed between 10pm and 6am – 1.5 times the employee's ordinary hourly rate;
- For work performed on a weekly rest day – 2 times the employee's ordinary hourly rate; and
- For work performed on a public holiday – 2.5 times the employee's ordinary hourly rate.

Overtime may only be performed in cases expressly provided for in section 67 of the Labour Proclamation and on the express instructions of the employer.

What the weekly rest and public holidays requirements?

The legislated weekly rest period is a minimum of twenty-four (24) hours in every seven (7) day cycle. Unless otherwise agreed in a collective agreement, the weekly rest period shall fall on a Sunday and shall be taken simultaneously by all employees. Where an employee's job requires that they cannot take the rest day on a Sunday, another day may be provided as a substitute.

All public holidays ordered by law, are paid holidays for all employees.

What are the minimum requirements relating to annual leave?

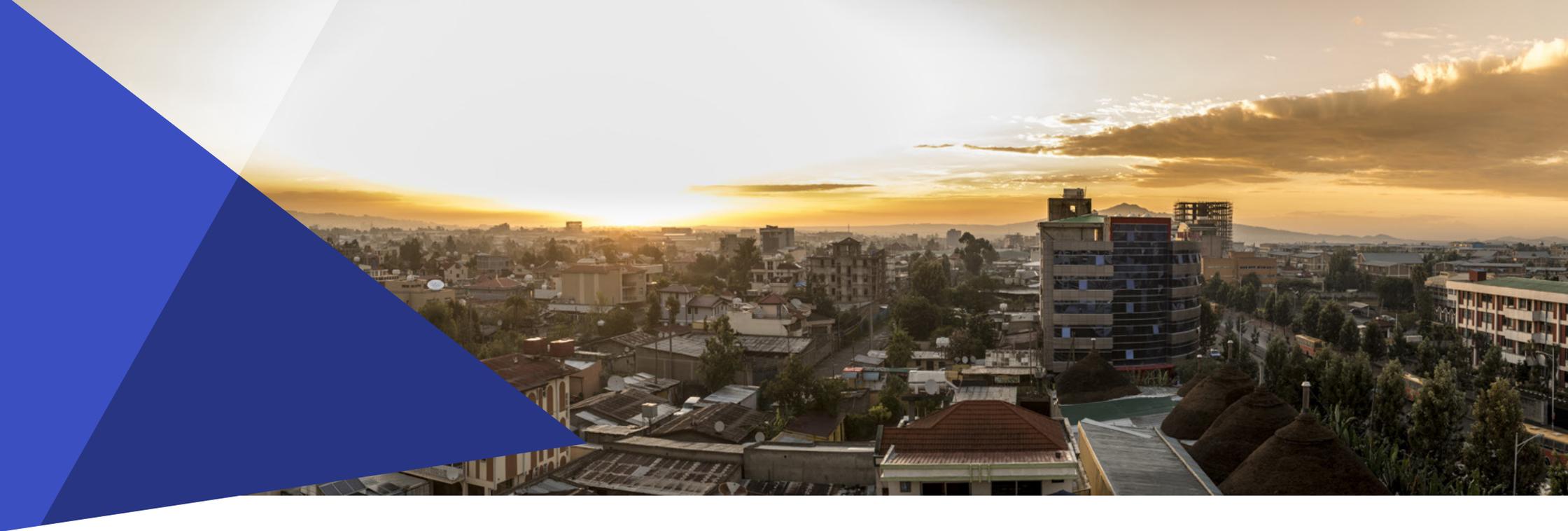
An employee is entitled to annual leave as follows:

- Fourteen (14) days in the first year of service; or
- Fourteen (14) days plus one (1) additional day for every year of service after the first year.

Collective agreements may fix more favourable annual leave entitlements for workers engaged in arduous or unhealthy conditions. Annual leave entitlements cannot be waived.

What are the minimum requirements relating to sick leave?

Employees are only entitled to sick leave at the end of their probation period. In terms of section 85 of the Labour Proclamation, an employee is entitled to a maximum of six (6) months' sick leave in any twelve (12) month period starting from the day the employee fell sick. Unless provided otherwise in terms of a collective agreement, employees shall be entitled to sick leave upon presenting a valid medical certificate. Employees are entitled to full pay for the first month of sick leave, half pay during their second month of sick leave and unpaid sick leave for the remaining duration of the entitlement.



THERE IS NO PROVISION IN THE LABOUR PROCLAMATION FOR PATERNITY LEAVE.

What are the minimum requirements relating to parental leave?

A female employee is entitled to thirty (30) consecutive days maternity leave before the birth of a child and sixty (60) consecutive days maternity leave thereafter. There is no provision in the Labour Proclamation for paternity leave.

What are the minimum requirements relating to family responsibility leave?

An employee is entitled to three (3) paid working days "special leave" when:

- he/she gets married; or
- in the event of the death of a spouse, descendant, ascendant, or relative whether by affinity or consanguinity up to the second degree.

An employee shall also be entitled to a maximum of five (5) unpaid consecutive days leave in the case of personal matters which are serious or exceptional.

Are employees automatically entitled to bonus payments? If not, is it common that bonuses are paid?

Bonus payments are made at the discretion of the employer.

Changing terms and conditions of employment

Are employees automatically entitled to periodic increases, alternatively how do the parties normally achieve consensus on increases?

This is not an entitlement provided for in the Labour Proclamation but can be agreed upon between the parties to the contract of employment.

Can employment terms be changed without achieving agreement with the employees?

Terms and conditions of employment not specified by the Labour Proclamation may be modified by collective agreement, work

rules drafted in accordance with the Labour Proclamation or by written agreement between the parties.

Are employees commonly represented in their interactions with employers relating to changes to employment terms?

Yes.

TERMINATION OF EMPLOYMENT

Contracts of employment may be terminated by either party in accordance with the provisions of the law, a collective agreement, or by mutual agreement. The Labour Proclamation recognises various grounds for dismissal linked to misconduct, incapacity or operational requirements. The Labour Proclamation also lays down rules as to the procedure to be followed in the event of dismissals as well as the payment of severance pay.

Can an employee be dismissed for misconduct?

An employee may be dismissed for misconduct. Unless otherwise determined by a collective agreement, an employee may be summarily dismissed on one of the following grounds:

- repeated and unjustified tardiness despite warning to that effect;
- absence from work without good cause for a period of five (5) consecutive working days or ten (10) working days in any period of one month or thirty (30) working days in a year;
- deceitful or fraudulent conduct in carrying out his duties having regard to the gravity of the case;
- misappropriation of the property or funds of the employer with intent to procure for himself or a third person undue enrichment;
- returning output which, despite the potential of the employee, is persistently below the qualities and quantities stipulated in the collective agreement or determined by the agreement of the two parties;
- responsibility for brawls or quarrels at the work place having regard to the gravity of the case;
- conviction for an offence where such conviction renders him unsuitable for the post which he holds;
- responsibility for causing damage intentionally or through gross negligence to any property of the employer or to another property which is directly connected with the work of the employer;
- commission of any of the unlawful activities referred to in section 14(2) of the Labour Proclamation;
- absence from work due to a sentence passed against him of imprisonment for more than thirty (30) days; and/or

- commission of other offences stipulated in a collective agreement as grounds for terminating a contract of employment without notice.

What notice periods are applicable?

Save where an employee is summarily dismissed, the following notice periods are applicable:

- one (1) month in the case of an employee who has completed his probation and has a period of service not exceeding one (1) year;
- two (2) months in the case of an employee who has a period of service of more than one (1) year;
- three (3) months in the case of an employee who has a period of service of more than nine (9) years; or
- two (2) months in the case of an employee who has completed his probation period and whose contract of employment is terminated by reason of the reduction of the employers' work force.

Can an employee be dismissed for incapacity?

Yes, section 28(1) of the Labour Proclamation permits dismissals based on loss of capacity, lack of skill or permanent disability or health impairment.

What notice periods are applicable?

The applicable notice periods are as follows:

- one (1) month in the case of an employee who has completed his probation and has a period of service not exceeding 1 (one) year;
- two (2) months in the case of an employee who has a period of service of more than 1 (one) year;
- three (3) months in the case of an employee who has a period of service of more than nine (9) years.



What dispute resolution mechanisms are available to the employee when the employee is dismissed for misconduct or poor work performance?

Employees may approach the labour division of the regional first instance court.

What remedies are available to the employee when the employee is dismissed for misconduct or poor work performance?

The remedies available are either reinstatement, compensation for unlawful termination or severance pay.

Can an employee be dismissed for operational requirements?

Yes, dismissal based on the employer's operational requirements is provided for in sections 24(4), 28(2) and 29 of the Labour Proclamation. Employees must be granted at least one (1) months' notice of the intended terminations.

Are any termination benefits payable in the event of a dismissal for operational requirements?

Where a contract of employment is terminated due to operational requirements, an employee is entitled to severance pay as follows:

- a sum equal to an employee's average daily wage for the last week of service multiplied by 60 (sixty); and
- either thirty (30) times an employee's average daily wages of the last week of service for the first year of service; where an employee has been in the service of the company for less than one (1) year, or, in the case of an employee who has served for more than 1 (one) year, payment shall be increased by one-third (1/3) of the aforementioned sum for every additional year of service, provided that the total amount shall not exceed twelve (12) month's wages of an employee.

What dispute resolution mechanism are available to the employee when the employee is dismissed for operational requirements?

The employee(s) may approach the labour division of the regional first instance court.

Employee remedies?

Reinstatement or compensation.

Third party approval for termination/ termination documents?

This is not provided for in law.



SOCIAL BENEFITS, TAX AND PENSIONS

Workplace injuries

In the event of workplace injury/disease, will employees be entitled to some form of compensation?

Employees are entitled to claim damages where an occupational injury is as a result of the fault on the part of the employer. In addition, where an employee sustains employment related injuries, the employer shall cover the following expenses: (i) general and specialized medical and surgical care, (ii) hospital and pharmaceutical care and (iii) any necessary prosthetic or orthopaedic appliances.

Return to work

Are employers obliged to reintegrate employees into the workplace after having recovered from workplace injuries?

This is not outlined in law.

Medical aid benefits

Are employers obliged to provide employees with membership to medical aids or other assistance with medical costs?

The law provides that employees are entitled to general and specialised medical care when they suffer an injury at the fault of the employer.

Taxation

What are the employer's obligations in respect of employee income tax?

The income tax rate depends on an employee's income and is between 15% and 35%. Income tax must be deducted from the employee's wages and paid to the Ethiopian Revenues and Customs Authority.

Other social benefits

What are other social benefits contributions must be made?

Employees must make contributions to the Pension and Social Security Authority.

DATA PRIVACY

What data privacy (if any) obligations rest on employers in respect of their employees?

Ethiopia does not have legislation specifically related to the protection of personal information of employees. However, there are various pieces of legislation related to privacy and data security, including the 1995 Constitution of the Federal Democratic Republic of Ethiopia, the 2005 Criminal Code of the Federal Democratic Republic of Ethiopia, the 1960 Civil Code, the Computer Crime Proclamation No. 958/2016 and the Freedom of the Mass Media and Access to Information Proclamation No. 590/2008.



**IN TERMS OF SECTION 16
OF THE LABOUR
PROCLAMATION, A
TRANSFER OF
BUSINESS
DOES NOT MODIFY
THE CONTRACT OF
EMPLOYMENT.**

BUSINESS TRANSFERS

Are employees automatically transferred to a new employer in the event of transfer of a business as a going concern?

The Labour Proclamation is silent on the process or status of the transfer of employment contracts in the event of a transfer of business. However, the Labour Proclamation does provide that a transfer of business does not modify the terms and conditions of an employment contract.

Is consultation or information disclosure required prior to transfer, and if so who must be consulted/receive information, and what disclosures must be made?

This is not provided for in the Labour Proclamation.

Joint and several liability for employers?

This is not provided for in the Labour Proclamation.

Is it possible to change terms and conditions of employment in the context of a business transfer?

This is not permissible. In terms of section 16 of the Labour Proclamation, a transfer of business does not modify the contract of employment.

Briefly describe the seriousness of consequences in the event of non-compliance.

This is not provided for in the Labour Proclamation.

RETIREMENT

What is the normal retirement age?

60 years old, however employees may retire at 55 years old.

Are any termination benefits payable in the event of retirement?

An employee is entitled to severance pay in terms of the Labour Proclamation and a pension from the Pension and Social Security Authority based on their contributions.

POST-TERMINATION RESTRAINTS

Enforceability of non-compete provisions

Can contractual non-compete provisions be enforced? Is it common for such "restraints" to form part of employment contracts?

The Trade Practices Proclamation does not apply to employer and employee relationships and thus employers can impose restraint of trade agreements against employees. The provisions of the common law will apply to such agreements.

CONFIDENTIALITY AND TRADE SECRETS

What protections are offered to employers in respect of their confidential information/trade secrets?

The legislation does not provide for protection of confidential information, but it is an implied duty in the employment contract. The provisions of the common law will apply.





FRENCH CONGO

Official language(s):

French

Population (approx.):

5m

Unemployment rate (2018):

11%

Name of court for labour matters:

High Court

Are pre-employment checks permissible?

Not regulated

Dismissal for misconduct: is there a requirement for procedural and substantive fairness?

Not adequately regulated

Immigration: must foreign employees obtain a work visa?

Yes

BACKGROUND

Applicable legislation

- The Code du travail Loi n°45-75 du 15 mars 1975 ("Labour Code")

Regulatory rating

 *Heavily regulated.*

HIRING DECISIONS

Pre-hire checks

May employers conduct pre-hire checks?

Not expressly excluded.

Hiring options

What hiring options are available to employers?

The hiring options available to employers are governed by Article 32–32(6) of the Labour Code. As such, employers may enter into a:

- fixed-term contract;
- temporary work contract; or
- an indefinite period contract.

Immigration

Do foreign employees require permits to work and which visas may be obtained to allow foreigners to work?

Foreign employees are required to obtain work permits to work in the Republic of Congo.

Are there any limitations placed on employers' discretion to determine new hires?

There is no limitation provided for in the law.

CONDITIONS OF EMPLOYMENT

Are contracts of employment required?

Contracts of employment are required for all employees. The Labour Code refers to an individual who has entered into a contract of employment with an employer.

Are there any formality requirements attached to employment contracts, eg written format and/or signed?

A fixed-term employment contract is required in writing as the latter is subject to particular indications. Temporary work employment contracts shall also be concluded in writing at least within two business days of the employment of services.

Probation

Can a probation period be used, and if so, is there a maximum prescribed period of probation?

A fixed-term employment contract may include a trial period. If there are no provisions providing for lesser periods, this trial period is determined as follows:

- 15 days for contracts whose duration is less than or equal to six months; and
- one month for other cases.

A temporary work employment contract can also include a possible trial period.

Minimum employment rights?

Are any employees excluded from minimum employment rights?

Government workers, the police and the Judiciary.

Is there a minimum wage requirement?

Decrees, on the advice of the Advisory National Commission of Labour, set the guaranteed minimum inter-professional wage.

What are the standard/maximum working hours? Are there prescribed minimum resting periods during the normal working day/week?

In all institutions, public or private, including educational and charitable institutions, the legal duration of work for employees may not exceed 40 hours per week.

A weekly rest period is provided for in the Labour Code. It is a minimum of 24 hours per week. It is usually on a Sunday.

What are the minimum requirements relating to overtime?

Decrees will determine the maximum duration of overtime which can be performed by industry and by occupational category. Hours worked beyond a legal duration of work will lead to a corresponding increase in salary.

What are the minimum requirements relating to annual leave?

Unless there are more favourable provisions in a collective agreement or contract of employment, an employee is entitled to paid leave at the rate of a minimum of 26 working days per year of actual service. The duration of the leave is increased through the consideration of the seniority of an employee in the company, the regulations in force or the provisions of a collective agreement. The right of enjoyment to leave is acquired after a period of actual service equivalent to 12 months and this right is prescribed by a period of three years.

What are the minimum requirements relating to sick leave?

It is not clear from the law.

What are the minimum requirements relating to parental leave, and does it apply to both parents or only mothers?

Every woman has the right to maternity leave equal to at least 15 consecutive weeks. The leave period may be extended by three weeks due to illness as a result of the pregnancy.

It is prohibited to employ women during the 15 weeks of maternity leave. For a period of 15 months from the birth of the child, the mother is entitled to rest, during working hours, for the nursing of the infant. The duration of these periods may not exceed one hour per day of work.

There is no provision for paternity leave as parental leave only applies to mothers.

What are the minimum requirements relating to family responsibility leave (if any)?

This is not provided for in the law.

Are employees automatically entitled to bonus payments?

In terms of a temporary work employment contract, the contract may indicate entitlement to a bonus. Decrees, on the advice of the Advisory National Commission of Labour, may further set requirements for bonuses. Employees are therefore not automatically entitled.

Changing terms and conditions of employment

Are employees automatically entitled to periodic increases, alternatively how do the parties normally achieve consensus on increases?

Hours worked beyond a legal duration of work will lead to a corresponding increase in salary. Employees are though not automatically entitled to any periodic increases.

Can employment terms be changed without achieving agreement with the employees?

This is impermissible and requires the employees or their representative trade union to consent.

Are employees commonly represented in their interactions with employers relating to changes to employment terms?

Several workers are affiliated to the Congolese Trade Union Confederation.



**HOURS WORKED
BEYOND A LEGAL
DURATION OF WORK
WILL LEAD TO A
CORRESPONDING
INCREASE IN
SALARY.**

SOCIAL BENEFITS, TAX AND PENSIONS

Workplace injuries

In the event of workplace injury/disease, will employees be entitled to some form of compensation?

A contract of employment is suspended during the period of inactivity resulting from an accident at work or an occupational disease. In this case; the employer is required to pay to the employee, in the normal limit of notice, compensation equal to the amount of their remuneration for the duration of the absence.

Return to work

Are employers obliged to reintegrate workers into the workplace after having recovered from workplace injuries?

This is not explicitly provided for in the law.

Medical aid benefits

Are employers obliged to provide employees with membership to medical aids or other assistance with medical costs outside of the context of workplace-related injury or disease?

Every company or institution must ensure sanitation and provide for medical services to its employees and members of their families. Companies that cannot provide adequate health facilities must combine to create intercompany medical units.

Taxation

What are an employer's obligations in respect of employee income tax, and what are the maximum personal tax rates that are applicable?

Employers are obliged to deduct income tax (around 20%) from employee wages and remit it to the tax authority. This also applies to foreign employees.

Other social benefits

What other employee social benefits must the employer either contribute to or deduct from employee contributions?

Employees are entitled to a pension and compensation for occupational risks, for which the employer and employee must make contributions.

DATA PRIVACY

What data privacy obligations (if any) rest on employers in respect of their employees?

This is not provided for in the law but governed by the employer's duty to protect the confidential information of employees.

BUSINESS TRANSFERS

Are employees automatically transferred to a new employer in the event of transfer of a business as a going concern?

If there is a change in the legal status of the employer, including a change by sale or merger; all contracts of employment on the day of the change remain between

the new employer and the employees of the employer. The new employer is automatically substituted in the place of the old employer.

Is consultation or information disclosure required prior to transfer, and if so who must be consulted/receive information, and what disclosures must be made?

The employer is not required to provide any information to or conduct any consultation with employees prior to effecting the transfer. However, if the sale of the business will result in retrenchment, the retrenchment procedure must be followed. The employer must then notify the representatives of the employees to gather their suggestions on the measures of the dismissal(s) which they intend to take and allow sufficient consultation with the relevant stakeholders.

Joint and several liability for employers?

There is no legal provision in relation to joint and several liability for employers.

Is it possible to change terms and conditions of employment in the context of a business transfer?

The contracts of employment transfer. The law does not provide deal with changes to terms and conditions after the transfer.

What are the consequences in the event of non-compliance.

The law does not provide for any consequences.



EMPLOYERS ARE OBLIGED TO DEDUCT INCOME TAX (AROUND 20%) FROM EMPLOYEE WAGES AND REMIT IT TO THE TAX AUTHORITY.



AN EMPLOYMENT CONTRACT CAN BE TERMINATED AT ANY TIME BY GIVING SUFFICIENT NOTICE TO THE OTHER PARTY.

TERMINATION OF EMPLOYMENT

What are the statutory obligations and procedures for terminating a contract of employment?

An employment contract can be terminated at any time by giving sufficient notice to the other party. Any termination notification must be in writing and must indicate the specific reasons of the termination. In the case of termination by mutual consent, only the lawful consent of the employee is required. This must be expressed in writing.

Termination for misconduct

What fair process requirements exist?

This is not adequately provided for.

What substantive fairness requirements exist?

This is not specifically provided for.

What are the dispute resolution mechanisms?

This is not specifically provided for.

What remedies are available to employees?

This is not specifically provided for.

Is third party approval for termination/ termination documents required?

This is not adequately provided for.

Termination for incapacity

What fair process requirements exist?

This is not specifically provided for.

What substantive fairness requirements exist?

This is not specifically provided for.

What are the dispute resolution mechanisms?

This is not adequately provided for. A competent Court may evaluate a dismissal and determine if it was regular.

What remedies are available to employees?

They are entitled to re-instatement or damages.

Is third party approval for termination/ termination documents required?

There is no specific provision in the Labour Code.

Termination for operational requirements

What fair process requirements exist?

Economic unemployment is a measure of suspension of the employment contract on the initiative of the employer for economic reasons. Technical unemployment is a measure of suspension of an employment contract due to the material impossibility of the employer to provide work in all or part of the company.

In the case of economic unemployment; an employer is required to send the economic and financial records, with the written notice of all partners within the company, to the Regional Director of Labour.

In the case of technical unemployment; an employer, after consultation with the partners within the company, is required to notify immediately the Regional Director of Labour who shall, after checking the reality of the facts or causes supporting the suspension, convene a Commission of disputes within 10 days.

What substantive fairness requirements exist?

During the period of unemployment due to economic or technical reasons, the employer cannot resort to the reduction of the weekly working hours or overtime hours of the employees remaining in the company or the hiring of new employees.

What are the dispute resolution mechanisms?

Parties can agree to settle their dispute through mediation or arbitration. If this fails a dispute can be referred to the High Court.

What remedies are available to employees?

Where the measure of unemployment based on economic or technical reasons leads to a dismissal; compensation may be payable by the employer.

Is third party approval for termination/ termination documents required?

With respect to economic unemployment, the Regional Director of Labour shall convene a Commission of disputes within 15 days after the filing of the application for authorisation of economic unemployment.

An employer who wishes to put its employees in technical unemployment is required to notify immediately the Regional Director of Labour who shall, after checking the reality of the facts or causes supporting the suspension, convene a Commission of disputes within 10 days.

Notice requirements

In the case of technical unemployment, the Director of Labour shall be notified immediately.

Termination benefits

Are any termination benefits payable in the event of a dismissal for misconduct?

This is not outlined in the legislation.

Are any termination benefits payable in the event of a dismissal for incapacity?

This is not outlined in the legislation.

Are any termination benefits payable in the event of a dismissal for operational requirements?

In economic or technical unemployment, an employee receives from their employer monthly compensation equal to one-third of their categorical salary. Also included are all the accessories of the salary not related to the actual provision of labour save for medical, pharmaceutical, and other social security benefits provided for by the collective agreement in force.

Where the measure of unemployment based on economic or technical reasons leads to a dismissal, the basis of calculating the compensation payable by the employer is the wage of the employee before the measure of economic or technical unemployment.

Are any termination benefits payable in the event of voluntary resignation by an employee?

This is not provided for in the law but there is an implied duty on the employer to pay accrued pay such as accrued leave days.

Are any termination benefits payable in the event of retirement?

In addition to the old pension, all their accrued benefits.

RETIREMENT

What is the normal retirement age?

It is not readily ascertainable that a prescribed retirement age is applicable to employees. Retirement age can therefore be incorporated into the employment contract or prescribed by the rules of the relevant pension fund scheme.



PARTIES CAN AGREE TO SETTLE THEIR DISPUTE THROUGH MEDIATION OR ARBITRATION.

POST-TERMINATION RESTRAINTS

Enforceability of non-compete provisions

Can contractual non-compete provisions be enforced?

It is permissible, unless otherwise agreed, for the employee to exercise any activity outside of their working time, if such activities do not compete with the company or interfere with the proper performance of the employee's duties.

Confidentiality and trade secrets

What protections are offered to employers in respect of their confidential information/trade secrets?

This is not provided for in the law but may be regulated by the employee's implied duties of confidentiality and good faith.



GHANA

Official language(s):

English

Population (approx.):

29m

Unemployment rate (2018):

5.7%

Name of court for labour matters:

Labour Court

Are pre-employment checks permissible?

Yes

Dismissal for misconduct: is there a requirement for procedural and substantive fairness?

Yes

Immigration: must foreign employees obtain a work visa?

Yes, foreigners are required to apply for a Ghana Work Permit or Immigrants Quota Permit

BACKGROUND

Applicable legislation

- Labour Act, No 651 of 2003 (Labour Act)
- Labour Regulations, 2007 (LI1833)
- Constitution of Ghana, 1992 as amended
- National Pension Act, No 766 of 2008
- National Health Insurance Regulation, 2004

Regulatory rating

✓ *Heavily regulated.*

HIRING DECISIONS

Pre-hire checks

May employers conduct pre-hire checks?

Employers may conduct pre-employment checks. The level of screening includes identity check, residential check, employment history (including restrictive covenants that may have been imposed on an employee in the previous employment), verification of education/professional licenses, professional qualification and verification of personal references.

A standard criminal check is also required, and more enhanced criminal checks may also be conducted for specific industries. An employment offer (especially for a permanent contract) must be made subject to a medical examination declaring that the employee is fit to work.

Hiring options

What hiring options are available to employers?

Employers may hire workers on a permanent contract. Section 73 of the Labour Act provides that the employer may hire workers on terms that suit the operations of the employer. Sections 74 to 78 also provide that employees may be employed as casual or temporary workers.

A temporary worker, in terms of s78 of the Labour Act, is defined as a worker who is employed for a continuous period of at least one month and is not a permanent worker or employed for work that is seasonal in character. A temporary worker who is employed by the same employer



for a continuous period of more than six months shall be treated as permanent worker. Temporary workers are entitled to the Labour Act's minima in respect of minimum wage, hours of work, rest periods, paid public holidays, night work and sick leave, irrespective of whatever terms are agreed by the parties.

A casual worker on the other hand is a worker who is engaged in work that is seasonal or intermittent and not for a continuous period of more than six months and whose remuneration is calculated on a daily basis. A contract of employment for a casual worker need not be in writing but casual workers have rights to minimum remuneration for each day worked, overtime and medical facilities.



Immigration

Do foreign employees require permits to work and which visas may be obtained to allow foreigners to work?

Foreign employees require a permit to work in Ghana. An employee requires a Ghanaian work permit or an Immigrant quota work permit and is not allowed to work in Ghana without a work permit.

The Ghana work permit or Immigrants quota work permit holder restricts the permit holder from engaging in any other employment, business, profession or occupation for a reward other than what is specified by the work permit or Immigrant quota. A foreign employee requires, in addition to the work permit or Immigrants' quota, a resident permit and may not commence work in Ghana without a resident permit. Local sponsors are not a requirement in Ghana.

Are there any limitations placed on an employers' discretion to determine new hires?

There are no limitations in this regard.

Section 46 of the Labour Act provides that employees are granted incentives for hiring persons with disabilities. The incentives are determined by the Labour Minister (s46(3) of the Labour Code).

Sections 58 to 59 of the Labour Act provide that there are limitations on the employment of young persons. These limitations include:

- The employer shall not employ young people within positions that will expose them to physical or moral hazards.
- Young persons shall not be employed for underground mine work.
- The employer shall not hire young persons to work unless a medical practitioner has certified that the young person is in good health and is medically fit to work.
- A young person is defined as any person of 18 years but below 21 years.

Employers are also prohibited from unfairly discriminating against employees or persons seeking employment.



**FOREIGN
EMPLOYEES
REQUIRE A
PERMIT
TO WORK IN
GHANA.**



THE CURRENT MINIMUM WAGE, FROM 1 JANUARY 2018 WILL BE **9.68 CEDIS** (ABOUT \$2) PER DAY.

CONDITIONS OF EMPLOYMENT

Are there any formal requirements for employment contracts?

Section 12 of the Labour Act provides that contracts of employment for employees, employed for a period of six months or more or for a number of working days equivalent to six months or more within a year, must be in writing. The contract must set out clear terms of the rights and obligations of the parties.

Probation

Can a probation period be used, and if so, is there a maximum prescribed period of probation?

There is no specified time period for probation. However, s66(b) of the Labour Act refers to a "reasonable duration determined in advance" for probation. Probationary periods and conditions of probation are generally provided in collective agreements. Where as a condition for the engagement of an employee, a contract of employment requires probation, the contract of employment has to specify the duration of the probation for the employee. See ss66(b) and 98(d) of the Labour Act read with Regulation 5 of the Labour Regulations.

Minimum employment rights?

These are provided for in Part IV (ss20 to 32 of the Labour Act) which regulate annual leave and sick leave provisions.

Are any employees excluded from minimum employment rights?

Section 1 of the Labour Act excludes employees, and these include employees in the Armed Forces, the Police Service, the Prison Service and the Security and Intelligence Agencies.

Is there a minimum wage requirement?

Although there is no separate minimum wage legislation, The National Tripartite Committee of which the Minister of Labour, employer and employee organisations are members of, determines the minimum wage. The current minimum wage, from 1 January 2018 will be 9.68 (cedis) (about \$2) per day.

What are the standard/maximum working hours? Are there prescribed minimum resting periods during the normal working day/week?

Section 33 of the Labour Act states that the standard working hours are 40 hours a week or eight hours a day. However, the rules of an undertaking or its branch may prescribe hours different from the standard noted above. Employees are also entitled

to a rest period of 30 minutes where the normal hours of work are continuous. However, if the normal hours are in two parts the break should not be less than one hour and does not form part of the normal hours of work.

Where an employee has worked normal hours for seven days, such employee must take a consecutive 48-hour rest period.

What are the minimum requirements relating to overtime?

There are no prescribed maximum or minimum hours for overtime except if employees work beyond the standard hours this amounts to overtime. While s35 of the Labour Act does not fix the rate of overtime remuneration, overtime hours are usually paid at 1.5 of the normal hourly wage rate. However, s35(2) does provide that a worker should only work overtime if the employer has fixed rates of pay for overtime work and the nature of the job requires overtime.

What are the minimum requirements relating to annual leave?

Section 20(1) of the Labour Act provides that employees are entitled to 15 working days leave with full pay for every year of continuous service (or not less than 200 days of service in a year).

What are the minimum requirements relating to sick leave?

The exact number of days allocated to sick leave is not specified in s24 of the Labour Act. The Act simply notes that sick leave supported with a medical certificate is independent of normal leave.

What are the minimum requirements relating to parental leave, and does it apply to both parents or only mothers?

Female employees are entitled to maternity leave of at least 12 weeks according to s57 of the Labour Act. The maternity leave is on full remuneration for the period of leave.

What are the minimum requirements relating to family responsibility leave (if any)?

There is no provision in law for paid or unpaid family responsibility or paternity leave.

Are employees automatically entitled to bonus payments?

There is no minimum statutory requirement in relation to bonuses, but some employers provide for payment of end of year bonuses which is discretionary and based on company performance.

Changing terms and conditions of employment

Are employees automatically entitled to periodic increases, alternatively how do the parties normally achieve consensus on increases?

There is no minimum requirement in law in relation to periodic increases of salary. Salary increases are based on performance of the employee, the company and form part of the collective agreements. For an employee to qualify for a salary increase, they must have 12 months continuous service. In the past, public servants were entitled to automatic increases, this is no longer the case.

Can employment terms be changed without achieving agreement with the employees?

Employment terms may not be unilaterally changed unless there is a provision to that effect in the contract of employment.

Are employees commonly represented in their interactions with employers relating to changes to employment terms?

The terms and conditions of a contract may be varied from time to time by agreement between the parties. Employees also may be represented by a union representative when interacting with employer.



SOCIAL BENEFITS, TAX AND PENSIONS

Workplace injuries

In the event of workplace injury/disease, will employees be entitled to some form of compensation?

Employees are entitled to compensation in terms of the National Health Insurance Regulation 2004. The employer is required to pay medical expenses in respect of occupational injuries.



**NATIONAL HEALTH
INSURANCE
REGULATION 2004
CATERS FOR
MEDICAL
PAYMENTS.**

Return to work

Are employers obliged to reintegrate workers into the workplace after having recovered from workplace injuries?

According to s50 of the Labour Act, if a person suffers disability during the course of their employment, the employer cannot simply terminate the employment without first trying to reintegrate the employee into the same or other corresponding job in the same undertaking. If the employer is unsuccessful they can terminate upon notice.

Medical aid benefits

Are employers obliged to provide employees with membership to medical aids or other assistance with medical costs outside of the context of workplace-related injury or disease?

National Health Insurance Regulation 2004 caters for medical payments. The employer is required to pay medical expenses in respect of occupational injuries.

Taxation

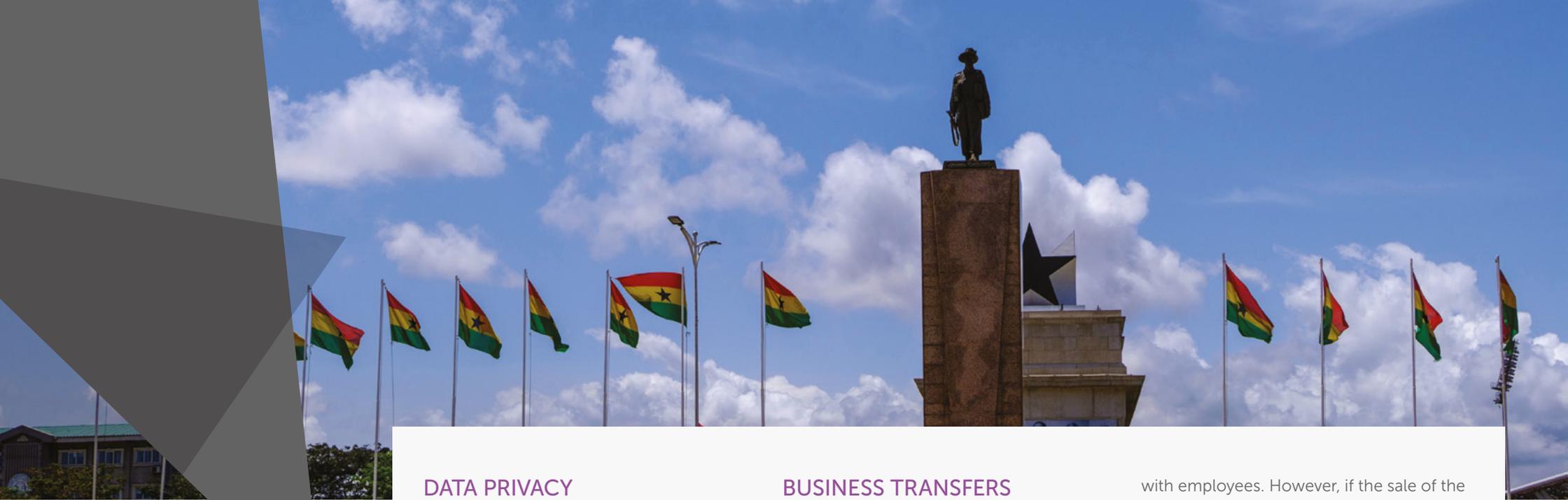
What are the employer's obligations in respect of employee income tax, and what are the maximum personal tax rates that are applicable?

All employees who earn above a certain threshold are liable to pay tax. Employers are thus obligated to deduct and withhold tax from their earnings and pay them over to the Ghana Revenue Authority. Employers are additionally obligated to submit annual tax returns in respect of their employees.

Other social benefits

What other employee social benefits must the employer either contribute to or deduct from employee contributions?

In terms of s70 of the Labour Act the employer may deduct contributions towards the provident, pension or other fund agreed to by the worker.



DATA PRIVACY

What data privacy obligations (if any) rest on employers in respect of their employees?

In terms of the Data Protection Act, 2012 the employee's right to privacy shall be protected. In order to access the personal data and information of an employee, the respective employee needs to consent before access can be granted. If the employer intends to disclose private information of the employee, the employee must consent. (See Section 20 of the Data Protection Act).

BUSINESS TRANSFERS

Are employees automatically transferred to a new employer in the event of transfer of a business as a going concern?

There is no statutory obligation for an employer to automatically transfer employees in the event of transfer of a business as a going concern. The employer who is in a process of transferring their business may not assign contracts of employment without the consent of the workers and an endorsement from the Labour Officer. If the employer who is taking transfer of the business as a going concern does not need the previous workforce, the previous business owner will have to retrench.

Is consultation or information disclosure required prior to transfer, and if so who must be consulted/receive information, and what disclosures must be made?

There is no requirement to provide any information or conduct any consultation

with employees. However, if the sale of the business will result in retrenchment, the procedure must be followed. In the event of retrenchment, the employer is required to provide the Chief Labour Officer and the trade union concerned reasons for the retrenchment, who will be affected and the timing of the redundancies. These reasons must be furnished in writing and not later than three months before contemplating the retrenchment.

Joint and several liability for employers?

There is no legal provision that imposes joint and several liability for employers.

Is it possible to change terms and conditions of employment in the context of a business transfer?

A new employer may change the terms of employment to harmonise these with the existing workforce, unless, a separate agreement is entered into, which provides for the new arrangement.



**THERE IS
NO LEGAL
PROVISION THAT
IMPOSES JOINT AND
SEVERAL LIABILITY FOR
EMPLOYERS.**

What are the consequences in the event of non-compliance?

An employer may face penalties if it fails to comply with the consultation requirements during a retrenchment exercise. The retrenchment shall be declared unlawful and the employer shall be required to pay compensation of an amount equal to at least 12 months.

TERMINATION OF EMPLOYMENT

What are the statutory obligations and procedures for terminating a contract of employment?

In terms of the Labour Act, the grounds for termination include misconduct, incapacity and redundancy. The Contract may be terminated on the following grounds:

- mutual agreement between employer and worker;
- by the worker on grounds of ill-treatment and sexual harassment;
- by the employer on the death of the employee prior to the expiration of the period of employment;
- by the employer if the employee is found to be medically unfit for employment.;
- by the employer because of the inability of the worker to carry out their work because of sickness or accident; incompetence of the worker or proven misconduct on the part of the worker; or
- by the employer on grounds of redundancy.

In order for the dismissal to be considered fair the employer must provide a reason, and there must be fair procedure.

Termination for misconduct

The Labour Act provides that the employer can dismiss an employee due to their proven misconduct. The employer is also required to follow a fair procedure. Fair procedure, however is not defined. The Labour Act merely provides that employers have a duty to provide and ensure the operation of an adequate procedure for discipline of the workers

What notice periods are applicable?

If an employee works:

- for longer than three years, either party is required to give one month notice or one month's pay *in lieu* of notice;
- for less than three years, either party is required to give two weeks' notice or two weeks' pay *in lieu* of notice; or
- on a contract from week to week, seven days' notice is required.
- Notice shall be in writing.

A contract of employment determinable at will by either party may be terminated at the end of the day, without any notice.

Termination for incapacity

Section 15(e) of the Labour Act provides that the employer can dismiss a worker because of the inability of the worker to perform their work due to a sickness or accident.

Unfortunately, s15(d) provides that an employer can dismiss a worker who is found on medical examination to be unfit for employment.

According to s62 of the Act, an employee can be dismissed if the worker is incompetent or lacks the qualification in relation to the work for which the worker

is employed. Termination for incapacity requires that the employer provides one of these reasons which will be a fair reason for the termination. The employer is also required to follow a fair procedure.

What notice periods are applicable?

If an employee works:

- for longer than three years either party is required to give one month notice or one month's pay *in lieu* of notice;
- for less than three years, either party is required to give two weeks' notice or two weeks' pay *in lieu* of notice; or
- on a contract from week to week, seven days' notice is required.
- Such notice shall be in writing.

A contract of employment determinable at will by either party may be terminated at the end of the day, without any notice.

What are the dispute resolution mechanisms?

The employee could lodge a complaint with the National Labour Commission established under s135 of the Labour Act to deal with complaints from workers, trade unions, employers or employer organisations.

What remedies are available to employees?

After investigation, should the Commission consider the termination unfair it could order, compensation to the worker, reinstatement of the worker from the date of termination or re-employment either in the work for which the worker was employed before termination or other reasonably suitable work on the same terms and conditions enjoyed by the worker before termination.



REDUNDANCY MATTERS CAN BE NEGOTIATED WITH THE TRADE UNION IF THE EMPLOYEE BELONGS TO ONE.

Termination for operational requirements

Section 65 of the Labour Act provides that an employee can be dismissed for operational reasons. These relate to the Introduction of major changes in production, programme, organisation, structure or technology. The reason for the termination must also be provided in writing to the Chief Labour Officer, and the trade union concerned must be consulted.

The employer is also required to follow a fair procedure. The employer is required to consult the trade union on how to avert or minimise the termination as well as on measures on how to mitigate the adverse effects on termination.

What are the dispute resolution mechanisms?

Any dispute concerning redundancy pay can be referred to the Commission.

What remedies are available to employees?

Section 65(2) makes provision for redundancy pay. According to s65(4), the amount of redundancy pay is subject to the negotiation between the employer

or representative of the employer and the workers or trade union. Any disputes relating to redundancy pay may be referred to the Commission.

Is third party approval for termination/ termination documents required?

Redundancy matters can be negotiated with the trade union if the employee belongs to one.

Termination benefits

Are any termination benefits payable in the event of a dismissal for misconduct?

Upon termination, employees are also entitled to remuneration earned before termination, deferred pay due to the employee before termination, compensation due in terms of sickness or accident, and for foreign contracts, expenses for the journey and repatriation costs for the employee and their family.

Are any termination benefits payable in the event of a dismissal for operational requirements?

Redundancy or severance pay is paid only if the organisation closes down or amalgamates with another organisation

and this leads to loss of benefits by the employee. This compensation, referred to as redundancy pay, is subject to negotiation between the employer or representative of the employer and the worker or the trade union. Any dispute relating to the redundancy pay shall be referred to the National Labour Commission for determination. The Commission's decision is final.

There is no severance pay in the case of individual dismissals for non-economic reasons.

Are any termination benefits payable in the event of a dismissal for incapacity?

Upon termination, employees are also entitled to remuneration earned before termination, deferred pay due to the employee before termination, compensation due in terms of sickness or accident, and for foreign contracts, expenses for the journey and repatriation costs for the employee and their family.

Are any termination benefits payable in the event of retirement?

The National Pension Act provides for full or partial retirement. Full pension benefits are attained at 60 years (and 55 if the employee worked in a hazardous environment). In both instances, the employee should have made contributions to the Pension Authority for at least 15 years.

The National Pensions Act also provides for an invalidity benefit in s71 of the Act as result of non-occupational accident or injuries resulting in permanent invalidity. Where an insured employee has made 12 months contributions in the last 36 months and is certified by a medical board on their inability to engage in gainful employment, they are entitled to invalidity benefits either as minimum pension (which is 37.5% of the workers' best three years average salary) or earned pension whichever is higher.

RETIREMENT

What is the normal retirement age?

The retirement age is 60 years, and 55 if the employee was working in hazardous conditions.



**THERE IS
NO SEVERANCE PAY
IN THE CASE OF INDIVIDUAL
DISMISSALS FOR NON-
ECONOMIC REASONS.**

POST-TERMINATION RESTRAINTS

Enforceability of non-compete provisions

Can contractual non-compete provisions be enforced?

There is no provision in the Labour Act in relation to non-compete provisions. Restraint of trade agreements are only upheld where it is reasonably necessary to protect the employer's right and not just against mere competition. For an employer to be able to enforce a non-compete, it must pass the reasonable test in respect of the duration, restriction and geographic scope of the covenant.

Confidentiality and trade secrets

What protections are offered to employers in respect of their confidential information/trade secrets?

There is no specific legal provision in the Labour Act or any other relevant act that protects employers from breaches of confidential information and trade secrets. However, employers must ensure that the contract of employment has robust confidentiality and trade secret clauses that survive post-termination. An employer may also approach the court for breach of the confidentiality and trade secret clauses. Unlawful competition may also be valid basis for a lawsuit.





KENYA

Official language(s):

Swahili, English

Population (approx.):

47.56m

Unemployment rate (2018):

11.75%

Name of court for labour matters:

Employment and Labour Relations Court

Are pre-employment checks permissible?

Yes

Dismissal for misconduct: is there a requirement for procedural and substantive fairness?

Yes

Immigration: must foreign employees obtain a work visa?

Yes





BACKGROUND

Applicable legislation

- Contracts in Restraint of Trade Act Cap 24
- Data Protection Act, No 24 of 2019
- Employment and Labour Relations Court Act, No 20 of 2011
- Employment Act, No 1 of 2007
- Employment (Amendment) Act 2021
- Housing Act Cap 117; and
- Industrial Training Act Cap 237
- Kenya Constitution, 2010
- Kenya Citizenship and Immigration Act, No 12 of 2011
- Labour Institutions Act, No 12 of 2007
- Labour Relations Act, No 14 of 2007
- National Social Security Fund Act, No 45 of 2013
- National Hospital Insurance Fund Act, No 9 of 1998
- Occupational Safety and Health Act, No 15 of 2007
- Persons with Disabilities Act, No 14 of 2003
- Pensions Act Cap 189
- Provident Fund Act Cap 191
- Retirement Benefits Act, No 3 of 1997
- Work Injury Benefit Act, No 13 of 2007
- **Regulatory rating**

 *Heavily regulated.*

HIRING DECISIONS

May employers conduct pre-hire checks?

Pre-employment checks to ensure suitability for an applied position are allowed. These include criminal and educational checks. Employers should however be careful not to infringe on the employee's right to privacy, which is protected under the Constitution and the Data Protection Act.

Hiring options

What hiring options are available to employers?

Various hiring options are available to employers. These include:

- open ended or permanent employment;
- fixed term employment;
- a probationary contract;
- piece work contract;
- foreign contract of service; and
- casual employment.

Immigration

Are there immigration requirements?

Yes.



EMPLOYERS MAY NOT EMPLOY CHILDREN UNDER THE AGE OF 13.

Do foreign employees require permits to work and which visas may be obtained to allow foreigners to work?

A foreign employee who wishes to take up employment in Kenya, whether for voluntary activities or for gain, is required to have a special pass, work or residence permit issued under the Kenya Citizenship and Immigration Act, 2011. A special pass is a temporary work authorisation issued by the department of immigration services. It is issued for periods of one, two or three months up to a maximum of six months in every 12-month period. Work or resident permit is a long-term work authorisation issued for a period of one or two years up to a maximum of five years. The five-year limit may be extended on application to the director of immigration services. These applications are in most cases applied for by an employer on behalf of an employee unless the employee is self-employed. Special passes or a work permits are issued to an employee when an employer can prove that the position cannot be adequately filled by a Kenyan citizen.

In the case of a prospective foreign investor intending to start a local entity, they are required to show proof of having incorporated the local entity, obtained the



necessary licenses as may be necessary for the business or profession and sufficient capital derived outside Kenya to be used in Kenya. When a foreign employee is to be employed by a non-governmental organisation operating in Kenya, they will need to obtain consent from the Non-Governmental Organisations Coordination Board to support their work permit application. Work permits are issued to members of a missionary society upon proof of registration of the society and approval by the Government that their presence will be beneficial to the country.



EMPLOYEES HIRED FOR MORE THAN THREE MONTHS ARE REQUIRED TO HAVE WRITTEN CONTRACTS.

Are there any limitations placed on employers' discretion to determine new hires?

Employers are prohibited from discriminating when hiring new employees. Equal opportunity is required to be promoted. When hiring new employees, the employer should consider affirmative action, the inherent requirements of the job, any restrictions imposed to certain categories of employment where it is necessary in the interest of state security, and employment of citizens according to the national employment policy. Employers may not employ children under the age of 13.

CONDITIONS OF EMPLOYMENT

Are there any formality requirements attached to employment contracts, e.g written format and/or signed?

There is no formality requirement for employment contracts. Employment contracts may be oral or written. However, employees hired for more than three months are required to have written contracts and the Employment Act prescribes what terms should mandatorily be included in the employment contract.

Can a probation period be used, and if so, is there a maximum prescribed period of probation?

Employment contracts can include a probation period. The probationary period shall not be more than six months but may, by agreement, be extended for another period of up to a further six months. Therefore, the total possible probationary period is 12 months.

Minimum employment rights?

Are any employees excluded from minimum employment rights?

Employees employed in the armed forces or the reserve as defined in the Armed Forces Act, the Kenya Police, the Kenya Prisons Service or the Administration Police Force; the Kenya Coast Guard Service, the National Youth Service; and an employer and the employer's dependents where the dependents are the only employees in a family undertaking.

Is there a minimum wage requirement?

Kenya has wages orders (enacted pursuant to the provisions of the Labour Institutions Act) that set out the basic minimum wages payable in Kenya. The wages



orders are sector specific but there is a general wages order that provides the general minimum wage of Kenya Shillings thirteen thousand five hundred and seventy two (KES 13,572). An employer who fails to pay to an employee to whom a wages regulation order applies at least the statutory minimum remuneration or provide an employee with the conditions of employment prescribed in the order, commits an offence.

What is the standard/maximum working hours? Are there prescribed minimum resting periods during the normal working day/week?

Working hours are prescribed under various Regulation of Wages Orders, enacted as subsidiary legislations to the Labour Institutions Act. Generally, a working week for a person working during daytime hours should consist of not more than 52 hours of work spread over six days of the week. The normal working week of a person employed for night work should consist of not more than 60 hours of work per week. An employer and employee may opt out of these restrictions. This waiver must be inserted in the employment contract.

For management level employees, the working hours are not restricted unless specifically limited in the contract of employment.

The Employment Act provides that an employee is entitled to at least one rest day in a period of seven days.

What are the minimum requirements relating to overtime?

An employee is entitled to be paid at the rate of 1.5 times their hourly rate for each hour worked in excess of their agreed number of hours per work and two times their normal hourly rate for time worked on the employee's normal rest day or a public holiday or otherwise as agreed in their contract of employment.

What are the minimum requirements relating to annual leave?

An employee is entitled to at least 21 working days of full paid leave after having worked for the employer for a period of 12 consecutive months. This period of leave may be divided with consent of the employee into different parts taken at different levels of at least two uninterrupted working weeks unless it is otherwise agreed as between the employer and employee or in a collective agreement.

However, if the employee works for less than 12 months and their employment is terminated, the employee will be allowed no less than one and three-quarter days of consecutive leave with full pay, in respect of each completed month of service in that period.

What are the minimum requirements relating to sick leave?

Sick leave is governed by the Regulation of Wages (General) Order, which provides that after two months' continuous service with an employer, an employee is entitled to a maximum of 30 days' sick leave with full pay and thereafter to a maximum of 15 days' sick leave with half pay in each period of 12 months' consecutive service. The employee is required to produce a medical certificate.

What are the minimum requirements relating to parental leave, and does it apply to both parents or only mothers?

Female employees are entitled to maternity leave of three months with full pay. Maternity leave can also be extended with the consent of the employer. Male employees are entitled to two weeks paternity leave with full pay. Both male and female employees are also entitled to pre-adoption leave of one month with full pay where they adopt a child.

What are the minimum requirements relating to family responsibility leave (if any)?

There are no specific days allocated for family responsibility leave.

Are employees automatically entitled to bonus payments?

No. This is at the discretion of the employer or may be included as one of the terms and conditions of employment.



FEMALE EMPLOYEES ARE ENTITLED TO MATERNITY LEAVE OF THREE MONTHS WITH FULL PAY.

Changing terms and conditions of employment

Are employees automatically entitled to periodic increases, alternatively how do the parties normally achieve consensus on increases?

No. Increases are normally negotiated and agreed to between the employer and employee. An employee may however be entitled to an increase where such increase is set out in their employment contract and the employee has achieved the milestones/conditions set to be entitled to the increase. The Labour Institutions Act provides that minimum wages may however be revised by the minister of Labour pursuant to a recommendation by a wages council.

Can employment terms be changed without achieving agreement with the employees?

No, the employer and employee must engage in consultation when discussing changes to terms of the employment contract.

Are employees commonly represented in their interactions with employers relating to changes to employment terms?

Yes. This is especially the case for unionised employees, where the employee's representatives/union must be consulted before an employer makes any changes to the terms and conditions of employment or the collective bargaining agreement.

SOCIAL BENEFITS, TAX AND PENSIONS

Workplace injuries

In the event of workplace injury/disease, will employees be entitled to some form of compensation?

Yes, employees will be entitled to compensation in terms of the Work Injury Benefit Act. An employer is required to take out an insurance policy with an insurer approved by the Minister.

Return to work

Are employers obliged to reintegrate workers into the workplace after having recovered from workplace injuries?

Where the employee has not exhausted their sick leave, it is expected that they should be reintegrated into the workplace. Employers can however terminate an employment contract where the employee is unable to perform his/her duties as a result of the injuries.

Medical aid benefits

Are employers obliged to provide employees with membership to medical aids or other assistance with medical costs outside of the context of workplace-related injury or disease?

The National Hospital Insurance Fund (NHIF) is a public scheme that assists with affordable health services. The employer is not required to contribute. However, in terms of the Employment Act, an employer is required to ensure sufficient provision of proper medicine for their employees during illness and if possible, medical attendance during serious illness, while at work.

Taxation

What are the employer's obligations in respect of employee income tax, and what are the maximum personal tax rates that are applicable?

Employers act as agents of the Kenya Revenue Authority and are required to deduct from the employees monthly pay and remit employment income tax. Employees who earn less than Kenya Shillings twenty four thousand (KES 24,000) per month are not obliged to pay tax. The amount of tax payable ranges from 10% to 30%. Kenya taxes individual income based on certain set tax bands. Income tax is levied at the rate of 10% for the first Kenya Shillings twenty four thousand (KES 24,000) per month, 25% on the next Kenya Shillings eight thousand three hundred and thirty three (KES 8,333) per month and 30% on all income amounts in excess of Kenya Shillings thirty two thousand three hundred and thirty three (KES 32,333) per month.

Other social benefits

What other employee social benefits must the employer either contribute to or deduct from employee contributions?

Employers may deduct provident fund contributions or superannuation scheme, or any other scheme approved by the Commission of Labour to which the employee agreed to contribute from the employee's wages. Employers and their employees must make equal monthly social security contributions to the National Social Security Fund as prescribed by law. Employers are required to ensure the sufficient provision of proper medicine to their employees during illness and



if possible, medical attendance during serious illness. Because of this requirement, most employers require their employees to be registered with the National Health Insurance Fund and employers deduct and remit monthly contributions from the employee's salary to the National Hospital Insurance Fund.

DATA PRIVACY

What data privacy obligations (if any) rest on employers in respect of their employees?

The privacy of employees is protected by the provisions of Article 31(c) of the Constitution that protect a person's right to privacy of information relating to their family or private affairs from being unnecessarily required or revealed and under the provisions of the Data Protection Act of 2019.



BUSINESS TRANSFERS

Are employees automatically transferred to a new employer in the event of transfer of a business as a going concern?

Kenya does not have a specific law that regulates transfer of contracts of employment and consequently, a business transfer does not result in the transfer of the employees. Employees remain under the employment of the employing entity unless their employment contracts are terminated on the grounds of redundancy and in accordance with the redundancy procedure prescribed in the Employment Act or the employment is terminated by mutual agreement between the employer and employee.

Is consultation or information disclosure required prior to transfer, and if so who must be consulted/receive information, and what disclosures must be made?

Employees or their representatives in the case of employees who belong to a union must be informed, and consulted about a transfer of business. Consultation must happen before the transaction is concluded (in most cases this will be one of the condition precedents to a business transfer). Employer may disclose, to the extent necessary, the reasons for the termination of the employees contracts and if deemed necessary the reasons for the business transfer.

Where a transfer of business results in redundancy, the labour office must be informed. A letter with the reason for the

redundancy and a list of the employees declared redundant, their termination date and pay must be sent to the labour office 30 days before the termination date.

Joint and several liability for employers?

Not addressed in the legislation.

Is it possible to change terms and conditions of employment in the context of a business transfer?

As stated in the above responses, where there is a business transfer, the employment contract is terminated. A new contract is then agreed to between the employer and employee in the new entity. The terms and conditions of the new contract may be similar or different from those of the terminated contract.

What are the consequences in the event of non-compliance?

Employees may bring an action against their employer for unfair termination.

TERMINATION OF EMPLOYMENT

What are the statutory obligations and procedures for terminating a contract of employment?

Employers can only terminate an employee's contract with valid cause such as misconduct, poor performance, incapacity of the employee or compatibility of the employee or operational requirements that necessitate a redundancy. The procedure for termination set out in the Employment Act 2007 must

be followed. Probationary contracts may however be terminated without cause. The courts have held that requiring an employee to give fair and just reasons for the termination of a probationary contract renders probation meaningless because it is a period for the employer and employee to relate with each other before making any confirmation. It has to be explained however that precedent in judicial decisions in Kenya are not always observed. Fixed-term employment contracts may be terminated by effluxion of time and an employer has no obligation to justify termination other than the lapse of the fixed period while contracts to perform specific work are terminated once the specific work is completed. However, this may be voided by the employer renewing a fixed term contract and creating a legitimate expectation of employment, rendering the fixed term employee, as good as a permanent employee.

The procedure for terminating an employment contract is set out in the Employment Act and requires a disciplinary meeting to be held with the employee where the employee is given the opportunity to explain their position, with a decision being taken thereafter by the employer. Any decision to terminate must be made in writing. On termination, the employee must be paid all dues and given a certificate of service.



**AN EMPLOYEE'S
EMPLOYMENT MAY
BE LAWFULLY
TERMINATED AS
PER THE PROVISIONS
IN THE CONTRACT OF
EMPLOYMENT AND THE
EMPLOYMENT ACT.**

Termination by Notice

The notice period required before terminating an employment contract is set out in section 35(1) of the Employment Act which provides that:

- i. where the contract is to pay wages daily, it may be terminated by either party at the close of any day without notice;
- ii. where the contract is to pay wages periodically, it may be terminated at intervals of less than one month, by either party at the end of the period next following the giving of notice in writing; or
- iii. where the contract is to pay wages or salary periodically at intervals of or exceeding one month, by either party at the end of the period of 28 days next following the giving of notice in writing.

The notice period may be dispensed if the party terminating the contract pays the other party an amount equal to the remuneration which would have been earned by that other party or paid by him, as the case may be in respect of the period of notice required to be given.

The consequence of termination by notice is that such an employee shall be entitled to service pay for every year worked, the terms of which shall be fixed by the Employment Act (s35(5)) unless the employee is a member of:

- i. a registered pension or provident fund scheme under the Retirement Benefits Act; or
- ii. a gratuity or service pay scheme established under a collective agreement; or
- iii. any other scheme established and operated by an employer whose terms are more favourable than those of the service pay scheme, and the National Social Security Fund.

Other Modes of Lawful Termination

An employee may be summarily dismissed. Summary dismissal takes place when an employer terminates the employment of an employee without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term. An employer may dismiss an employee summarily when the employee has by his conduct indicated that he has fundamentally breached his obligations arising under the contract of service. Employees who are summarily dismissed are still entitled to be granted a hearing by the employer and the employer should consider any representations which the employee may have.

Termination of misconduct

Do fair process requirements exist?

Yes. Where an employee is terminated for misconduct, the following process must be followed:

- i. Investigations into the misconduct are carried out.
- ii. The employee is issued a written notice to show cause.
- iii. A disciplinary hearing is conducted and following this, the disciplinary committee informs the employee of the decision, which can be:
 - a final warning; or
 - termination of employment, where the employer gives notice to the employee or pays *in lieu* of notice, and terminal dues are paid either at the end of the notice period or with the payment *in lieu* of notice; or
 - summary dismissal, where employment is terminated immediately and terminal dues paid.

The grounds for summary dismissal include gross misconduct such as:

- without leave or other lawful cause, an employee absents themselves from work;
- during working hours, by becoming or being intoxicated, an employee renders themselves unwilling or incapable to perform their work properly; an employee wilfully neglects to perform any work which was their duty to perform, or if they carelessly and improperly perform any work which from its nature was their duty, under their contract, to have performed carefully and properly;



WHAT NOTICE PERIODS ARE APPLICABLE? AT LEAST A **30-DAY PERIOD** PRIOR TO **DISMISSAL.**

- an employee uses abusive or insulting language, or behaves in a manner insulting, to their employer or to a person placed in authority over them by their employer;
- an employee knowingly fails, or refuses, to obey a lawful and proper command which was within the scope of their duty to obey, issued by their employer or a person placed in authority over them by their employer;
- in the lawful exercise of any power of arrest given by or under any written law, an employee is arrested for a cognisable offence punishable by imprisonment and is not within 14 days either released on bail or on bond or otherwise lawfully set at liberty; or
- an employee commits, or on reasonable and sufficient grounds is suspected of having committed, a criminal offence against or to the substantial detriment of their employer or their employer's property.

The employer must provide the employee with a reason for considering termination of the employment relationship. Certain reasons do not constitute fair reasons for dismissal such as disability, social or ethnic origin, mental status, pregnancy or HIV/AIDS.

What notice periods are applicable?

Where the contract of employment is to pay wages daily, a contract is terminable by either party at the close of any day without notice.

Where the contract of employment is one where wages are periodically at intervals of less than one month, a contract is terminable by either party at the end of the period next following the giving of notice in writing.

Where an employee's wages are paid periodically at intervals exceeding one month, the contract of employment is terminable by either party at the end of the period of 28-days next following the giving of notice in writing.

Either of the employer or employee to a contract of service may terminate the contract without notice upon payment to the other party of the remuneration which would have been earned by that other party or paid by them as the case may be in respect of the period of notice.

If the misconduct occurs during the probation period, the employer may terminate the contract by giving seven days' notice or by payment of seven days wages *in lieu* of notice.

Employee remedies

Employee remedies depend on the cause of termination as set out below.

Summary dismissal:

- salary up to the date of termination;
- accrued leave up to the date of termination; and
- The Employment Act (Section 49) provides that if a labour officer

determines that the summary dismissal was unfair they may recommend that the employer reinstates the employee or re-engage the employee in work comparable to the position held before dismissal. In practice however, this is rare since once the employment relationship has broken, reinstatement may not be a viable option to both employer and employee.

Redundancy:

- salary and bonuses up to the date of termination;
- accrued leave up to the date of termination;
- severance pay; and
- gratuity pay (optional).

Misconduct, Incapacity and Poor performance:

- salary and bonuses up to the date of termination;
- accrued leave up to the date of termination;
- notice pay (if the notice period is not given); and
- gratuity pay (optional).

Are any termination benefits payable in the event of a dismissal for misconduct?

An employee may be entitled to all employee remedies if the procedure for termination is not followed irrespective of whether the employee was terminated as a result of misconduct. An employee will also be entitled to service pay unless exempted as provided for under the Employment Act.

Is third party approval for termination/ termination documents required?

Third party approval is not required for termination.

Termination for incapacity

What fair process requirements exist?

Prior to termination for incapacity:

- i. The employer is required to invite the employee to a hearing by way of a letter, which should include the reasons for the hearing, the hearing date and a notice to the employee that he/she has the right to be accompanied by a colleague or union representative.
- ii. Once the hearing has been conducted, the employee must be informed of the determination reached and if there are valid and fair reasons for termination, the employer gives notice to the employee or pays him/her *in lieu* of notice. Terminal dues are paid either at the end of the notice period or with the payment *in lieu* of notice.

What substantive fairness requirements exist?

For termination of employment to pass the fairness test, there must be both substantive justification and procedural fairness. Substantive justification involves establishing a valid reason for the termination while procedural fairness addresses the procedure adopted by the employer in effecting the termination. An employer shall, before terminating the employment of an employee:

- i. explain to the employee, in a language the employee understands the reason for which the employer is considering termination;
- ii. allow a representative of the employee being either a fellow employee, or a shop floor representative to be present during the explanation;



- iii. ensure that the employee has been given a reasonable opportunity to make his/her representation and that the employee has been heard and the representations considered.

The employer is also expected to observe the rules of natural justice of giving the employee notice of the impending hearing and the grounds for the disciplinary hearing to enable the employee prepare to defend themselves.

Notice periods

Where the contract of employment is to pay wages daily, a contract is terminable by either party at the close of any day without notice.

Where the contract of employment is one where wages are periodically at intervals of less than one month, a contract is terminable by either party at the end of the period next following the giving of notice in writing.

Where an employee's wages are paid periodically at intervals exceeding one month, the contract of employment is terminable by either party at the end of the period of 28 days next following the giving of notice in writing.

Are any termination benefits payable in the event of a dismissal for incapacity?

An employee shall be entitled to the following benefits:

- salary and bonuses up to the date of termination;
- accrued leave up to the date of termination;

- notice pay (if the notice period is not given); and
- gratuity pay (optional).

What are the dispute resolution mechanisms?

The labour officer, arbitration or the Employment and Labour Relations Court forums may be used .

What remedies are available to employees?

In the event that the dismissal is deemed to be unfair, the following remedies are available to employees:

- The employee will receive the wages which the employee would have earned had the employee been given the period of notice to which they were entitled or the equivalent of a number of months' wages or salary not exceeding 12 months based on the gross monthly wage or salary of the employee at the time of dismissal.
- Where dismissal terminates the contract before the completion of any service upon which the employee's wages became due, the employer may be required to pay the proportion of the wage due for the period of time for which the employee has worked; and any other loss consequent upon the dismissal and arising between the date of dismissal and the date of expiry of the period of notice, which the employee would have been entitled to by virtue of the contract.
- Reinstatement or re-employment.

Where the employee successfully claims that they were discriminated against, the quantum of damages may significantly increase. Courts have held that the correct approach in awarding damages is to use a composite or global figure of damages (about 5,000,000 to 7,500,000). Awards for discrimination are not based on the employees remuneration as this poses the danger that high earning individuals may unwittingly be awarded more as compensation than those that earn less, even though the injury suffered by may be equal or greater for the latter.

Is third party approval for termination/ termination documents required?

Where the termination is due to incapacity, a medical practitioner must confirm the incapacity of the employee.

Termination for operational requirements (redundancy)

What fair process requirements exist?

Consultations must be held with the employee or employee representative/union on the impending redundancy. A 30-day notice of termination on grounds of redundancy is thereafter given to the employee, the labour officer and trade union for unionised employees. After the lapse of the 30-day statutory notice, the contractual notice period starts and in the alternative the employer can pay the employee *in lieu* of notice. Terminal dues are paid either at the end of the notice period or with the payment *in lieu* of notice. The employer is required to consider seniority, skill, ability and reliability of the employees when considering redundancy.

What notice periods are applicable?

At least one month's notice for the impending redundancy and then the contractual notice period.

Are any termination benefits payable in the event of a dismissal for operational requirements?

Yes.

What are the dispute resolution mechanisms?

Parties may approach a labour officer or the Employment and Labour Relations Courts for dispute resolution. Arbitration may also be used where the parties have in their employment contract provided for arbitration as the dispute resolution mechanism or where the parties mutually agree to resolve the dispute by arbitration.

The Employment and Labour Relations Court Act

The Employment and Labour Relations Court Act is an Act of Parliament which establishes the jurisdiction of the Employment and Labour Relations Court to hear and determine disputes relating to employment and labour relations and for connected purposes.

Jurisdiction

Section 12 of the Act establishes the jurisdiction of the Court and states that the Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with art162(2) of the Constitution and the



THERE ARE TWO PRIMARY LEGISLATIVE SCHEMES THAT REGULATE INDUSTRIAL RELATION.

provisions of the Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including:

- disputes relating to or arising out of employment between an employer and an employee;
- disputes between an employer and a trade union;
- disputes between an employers' organisation and a trade union's organisation;
- disputes between trade unions;
- disputes between employer organisations;
- disputes between an employers' organisation and a trade union;
- disputes between a trade union and a member thereof;
- disputes between an employer's organisation or a federation and a member thereof;
- disputes concerning the registration and election of trade union officials; and
- disputes relating to the registration and enforcement of collective agreements.

The Court also has jurisdiction to hear and determine appeals arising from decisions of the Registrar of Trade Unions and decisions of any other local tribunal or commission as may be prescribed under any written law.

Appeal procedures

Section 17 of the Employment and Labour Relations Court Act states that appeals from the Court shall lie to the Court of Appeal against any judgment, award, order or decree issued by the Court in accordance with art164(3) of the Constitution.

The remedies awarded

Section 12(3) of the Act provides the general powers of the court. In exercise of its jurisdiction, the Court shall have power to make any of the following orders:

- interim preservation orders including injunctions in cases of urgency;
- a prohibitory order;
- an order for specific performance;
- a declaratory order;
- an award of compensation in any circumstances contemplated under this Act or any written law;
- an award of damages in any circumstances contemplated under this Act or any written law;
- an order for reinstatement of any employee within three years of dismissal, subject to such conditions as the Court thinks fit to impose under circumstances contemplated under any written law; or
- any other appropriate relief as the Court may deem fit to grant.

Labour Officers under Employment Act

Section 87 of the Employment Act provides that any question, difference or dispute arises as to the rights, obligations or liabilities of an employer or employee under an employment contract, the aggrieved party may complain to the labour officer or lodge a complaint or suit at the Employment and Labour Relations Court. The labour officers under the Act also deal with termination of contract of employment, summary dismissal, unfair termination and any issues arising between employer and employee.

The Labour Officer where in their opinion summary dismissal or termination of a contract of an employee is unjustified, or unfair recommend to the employer to pay to the employee:

- i. the wages which the employee would have earned had the employee been given the period of notice to which he was entitled under the Act or his contract of service;
- ii. where dismissal terminates the contract before the completion of any service upon which the employee's wages became due, the proportion of the wage due for the period of time for which the employee has worked; and any other loss consequent upon the dismissal and arising between the date of dismissal and the date of expiry of the period of notice referred to in paragraph (i) which the employee would have been entitled to by virtue of the contract;

- iii. the equivalent of a number of month's wages or salary not exceeding 12 months based on the gross monthly wage or salary of the employee at the time of dismissal;
- iv. reinstate the employee and treat the employee in all respects as if the employee's employment had not been terminated; or
- v. re-engage the employee in work comparable to that in which the employee was employed prior to their dismissal, or other reasonably suitable work, at the same wage.

What remedies are available to employees?

If the employer fails to follow the correct process during a redundancy, the courts could hold that the redundancy never occurred.

In the event that the dismissal is deemed to be unjustified in the opinion of a labour officer, the following remedies are available to employees: the employee will receive the wages which the employee would have earned had the employee been given the period of notice to which he was entitled or the equivalent of a number of months wages or salary not exceeding 12 months based on the gross monthly wage or salary of the employee at the time of dismissal.

Further, where dismissal terminates the contract before the completion of any service upon which the employee's wages became due, the labour officer could also recommend the employer pay the proportion of the wage due for the period of time for which the employee has worked; and any other loss consequent upon the dismissal and arising between

the date of dismissal and the date of expiry of the period of notice, which the employee would have been entitled to by virtue of the contract.

In the event that the dismissal is deemed to be unfair in the opinion of a labour officer, the Labour officer may order either reinstatement or re-employment. Where the employee successfully claims that they were discriminated against, the quantum of damages may significantly increase. Courts have held that the correct approach in awarding damages is to use a composite or global figure of damages (about 5,000,000 to 7,500,000). Awards for discrimination are not based on the employees remuneration as this poses the danger that high earning individuals may unwittingly be awarded more as compensation than those that earn less, even though the injury suffered by may be equal or greater for the latter.

Third party approval for termination/ termination documents?

At least one month before the intended redundancy, the union or the employees will need to be consulted.

Notice requirements

As above. The notice periods in s35 of the Employment Act apply to termination by redundancy as well. Therefore, where the contract of employment is to pay wages daily, a contract is terminable by either party at the close of any day without notice. Where the contract of employment

is one where wages are periodically at intervals of less than one month, a contract is terminable by either party at the end of the period next following the giving of notice in writing. Where an employee's wages are paid periodically at one-month intervals or intervals exceeding one month, the contract of employment is terminable by either party at the end of the period of 28 days next following the giving of notice in writing.

Termination benefits

Employees who have had their employment terminated due to redundancy shall receive their salary and bonuses up to the date of termination, accrued leave up to the date of termination, severance pay and gratuity pay (optional).

Are any termination benefits payable in the event of dismissal or misconduct?

The employee would be entitled to all accrued benefits. If the employee terminates without notice, the employee would have to pay the employer the wages which would have been earned by the employee.

Are any termination benefits payable in the event of retirement?

As above. However, an employee would be entitled to benefits in terms of their Pension Fund.

RETIREMENT

What is the normal retirement age?

There is no mandatory retirement age in the private sector. This may be provided for in the employment contract or the employer's human resources manual or employment policies. In the public sector, an individual must retire at 60 years. However, there are instances where exceptions may be granted, particularly to management level or highly specialised employees.

POST-TERMINATION RESTRAINTS

Enforceability of non-compete provisions

Can contractual non-compete provisions be enforced?

Restraint of trade agreements are valid in Kenya by virtue of the Contracts in Restraint of Trade Act, Chapter 24 of the Laws of Kenya. Contracts with restrictive clauses, including non-compete provisions are allowed provided they are not extremely broad so as to be regarded as unenforceable by courts. Courts have power to determine the enforceability of these clauses, which is done on a case-by-case basis. The factors considered in determining the enforceability of the restrictive clauses (not to compete, solicit or deal customers) include the nature of the specific profession, trade, business or occupation concerned, the period of time and the area within which the restrictive clause is expressed to apply, the

circumstances of each specific case, the interests of the parties and the general public interest. The courts will not enforce a restraint that goes beyond affording adequate protection to the legitimate interest of an employer.

Confidentiality and trade secrets

What protections are offered to employers in respect of their confidential information/trade secrets?

The Data Protection Act protects information relating to individuals from unnecessary disclosure or transfer and this extends to employers' confidential information/trade secrets where such information can be classified as personal data.

The Official Secrets Act prohibits government officials from disclosing information that they get in the course of their work. In terms of English common law, which is applicable in Kenya by virtue of arts 2(5) and 2(6) of the Constitution, an employee owes the employer a duty of good faith which encompasses the duty to uphold the confidentiality of the employer's confidential information. This duty arises out of the employment relationship and continues after the termination thereof.

Section 132 of the Evidence Act protects the government's confidential information (where government is the employer). Public officials are protected from being compelled to adduce evidence on matters of official communication if public interest would suffer in the disclosure.



LESOTHO

Official language(s):	English, Southern Sotho
Population (approx.):	2m
Unemployment rate (2018):	27.3%
Name of court for labour matters:	Labour Court
Are pre-employment checks permissible?	Yes
Dismissal for misconduct: is there a requirement for procedural and substantive fairness?	Yes
Immigration: must foreign employees obtain a work visa?	Yes, foreigners are required to apply for a certificate of employment (work permit)





BACKGROUND

Applicable legislation

- Labour Code Order 24 of 1992 ("Labour Code")
- The Workmen's Compensation Act, No 13 of 1977 ("Act")
- Code of Good Practice of 2003

Regulatory rating

✓ *Heavily regulated.*

HIRING DECISIONS

Pre-hire checks

May employers conduct pre-hire checks?

This is not prohibited in the law.

Hiring options

What hiring options are available to employers?

The hiring options available to employers are governed by s62 of the Labour Code which provides the types of employment contracts. As such, employers may enter into:

- permanent employment contracts;
- fixed-term contracts;
- contract to perform some specified work or to undertake a specified journey; and
- contract of foreign service.

Immigration

Do foreign employees require permits to work and which visas may be obtained to allow foreigners to work?

A person who holds a visitors' visa may not conduct actual work without first obtaining work authorisation in the form of a valid certificate of employment from the Labour Commissioner (work permit). The work permit is issued by the Labour Commission. The work permit will be valid for any period not exceeding two years. This period may, however, be extended by the Labour Commissioner on application.



Are there any limitations placed on employers' discretion to determine new hires?

The Labour Code requires that the National Employment Service must conduct an investigation to establish if there are any citizens of Lesotho who are qualified and can provide the services for which the foreigner is being recruited for. The work permit will only be issued to a foreigner if there is no citizen who is qualified and available for that particular type of employment.

CONDITIONS OF EMPLOYMENT

Are contracts of employment required?

The definition of employer provides that they must employ a person under a contract.

Are there any formality requirements attached to employment contracts, eg written format and/or signed?

A contract of foreign service must be in writing and must be presented to a notary in quadruplicate.



LESOTHO HAS A GOVERNMENT-MANDATED MINIMUM WAGE.

Probation

Can a probation period be used, and if so, is there a maximum prescribed period of probation?

The Labour Code provides that employment contracts may be subject to a probationary period which may not exceed four continuous months. The probationary period may be extended with the leave of the Labour Commissioner, by way of written application.

Minimum employment rights?

Are any employees excluded from minimum employment rights?

The Labour Code does not have universal coverage but according to s2(a), it does not apply to members of:

- the Royal Lesotho Defence Force;
- the Royal Lesotho Mounted Police; or
- any other disciplined force.

Is there a minimum wage requirement?

Lesotho has a government-mandated minimum wage. No worker in Lesotho may be paid less than the mandatory minimum rate of pay. The minimum wage rate was last changed in 2014. The current minimum wage is fixed at M1,285 (Lesotho Maloti) per month. The minimum wage will also vary depending on the sector of the employer.

What are the standard/maximum working hours? Are there prescribed minimum resting periods during the normal working day/week?

Section 118 of the Labour Code provides that the working hours of an employee may not exceed more than 45 hours a week. An employee who ordinarily works a five-day week can only work nine hours of work a day. An employee who ordinarily works a six-day week, can work eight hours of work for five days and work five hours of work on one of the days.

All employees are entitled to a weekly rest period of at least 24 continuous hours. The rest period will usually be on a Sunday. An employee who works on their weekly rest day or on a public holiday is entitled to be paid at double the normal rate for that day's work.

What are the minimum requirements relating to overtime?

An employer may not work for more than 11 additional hours a week (s118(3) of the Labour Code). The employer is required to pay employees who work overtime at a rate not less than 1.25 of the normal work rate.

What are the minimum requirements relating to annual leave?

Section 120 of the Labour Code prescribes that an employee is entitled to a minimum of 12 working days annual leave with full pay. Where the employment contract or collective agreement provides for leave of more than the minimum 12 days of annual leave, the employee's annual leave may be carried over to the following year. Where the leave has been carried over to the next year it may not exceed 18 days.

What are the minimum requirements relating to sick leave?

Section 123(2) of the Labour Code provides that after six months of continuous employment with the same employer, the employee will be entitled to sick leave for up to 12 days for the second months' continuous employment period. Further, s123(3) of the Labour Code provides after 12 months of continuous employment with the same employer, the employee will be entitled to sick leave for up to 12 days per annum.

What are the minimum requirements relating to parental leave, and does it apply to both parents or only mothers?

Section 133(1) and (2) of the Labour Code provides that female employees are entitled to 12 weeks maternity leave which is calculated as follows:

- six weeks maternity leave before the birth of the baby; and
- six weeks after the birth of the baby.

A female employee who is nursing her infant child is entitled to an hour each day for six months after her return to work, to breastfeed her child. The rest will form part of the female employees normal working hours.

There is no legislative provision for paternity leave.

What are the minimum requirements relating to family responsibility leave (if any)?

Whereas family responsibility is not provided for, dismissing an employee who has taken time off to handle family responsibilities is not permissible.

Are employees automatically entitled to bonus payments?

The definition of "full pay" in terms of s120(7) of the Labour Code does not include any bonus payments an employee may have received from time to time. Employees are thus not automatically entitled to bonus payments.

Changing terms and conditions of employment

Are employees automatically entitled to periodic increases, alternatively how do the parties normally achieve consensus on increases?

No, this must be agreed upon by the parties to the contract.

Can employment terms be changed without achieving agreement with the employees?

The Labour Code recognises collective bargaining as an integral mechanism to resolving disputes between the employer and employees. It can be presumed that employment terms cannot be changed without achieving agreement with the employees.

Are employees commonly represented in their interactions with employers relating to changes to employment terms?

Yes. Section 3 of the Labour Code recognises collective bargaining as an integral mechanism to resolving disputes between the employer and employees. In terms of s196 of the Labour Code, every employee has the right to join a trade union.



AN EMPLOYEE WHO ORDINARILY WORKS A FIVE-DAY WEEK CAN ONLY WORK NINE HOURS OF WORK A DAY.

SOCIAL BENEFITS, TAX AND PENSIONS

Workplace injuries

In the event of workplace injury/disease, will employees be entitled to some form of compensation?

Not all employees who suffer from work-related disease and occupational injuries are entitled to compensation. An employee will only be entitled to compensation if they are injured or contract an occupational disease during the course of their employment. Furthermore, compensation is limited to employees who meet the definition of "workman" as defined by the Act.

Death is not the only thing that can give rise to compensation, an employee may be entitled to compensation if they suffer total incapacity, permanent partial incapacity, or temporary capacity because of the accident or occupational disease.

Return to work

Are employers obliged to reintegrate workers into the workplace after having recovered from workplace injuries?
No.

Medical aid benefits

Are employers obliged to provide employees with membership to medical aids or other assistance with medical costs outside of the context of workplace-related injury or disease?
Section 85(2)(a)(ii) of the Labour Code provides that deductions which may be deducted from the employees' wages include contributions due from the employee to any medical fund.

This may be included in the employment contract and employers are not obliged to provide same.

Taxation

What are an employer's obligations in respect of employee income tax, and what are the maximum personal tax rates that are applicable?

An employer is obliged and authorised to deduct any tax or rate imposed by the law from an employee's wages.

Other social benefits

What other employee social benefits must the employer either contribute to or deduct from employee contributions?

Deductions which may be deducted from the employees' wages include contributions due from the employee to any provident or pension fund or any other fund or scheme approved by the Minister of Labour (s85(2)(a)(ii) of the Labour Code). This may be included in the employment contract and employers are not obliged to provide same.

DATA PRIVACY

What data privacy obligations (if any) rest on employers in respect of their employees?

Employers are required to keep a register of all their employees and the wages received by the employees. The Labour Commissioner may in writing require an employer to produce such records.

BUSINESS TRANSFERS

Are employees automatically transferred to a new employer in the event of transfer of a business as a going concern?

The Labour Code is silent when comes to the transfer of a business.

Is consultation or information disclosure required prior to transfer, and if so who must be consulted/receive information, and what disclosures must be made?

There is no legal provision in relation to consultation or information disclosure required prior to transfer.

Joint and several liability for employers?

There is no legal provision in relation to joint and several liability for employers.

Is it possible to change terms and conditions of employment in the context of a business transfer?

There is no legal provision in relation to the change of terms and conditions of employment in the context of a business transfer.

What are the consequences in the event of non-compliance?

There is no legal provision in relation to consequences in the event of non-compliance.



**THERE IS
NO LEGAL
PROVISION THAT
IMPOSES JOINT AND
SEVERAL LIABILITY FOR
EMPLOYERS.**

TERMINATION OF EMPLOYMENT

What are the statutory obligations and procedures for terminating a contract of employment?

Section 66(1) of the Labour Code provides that an employee shall only be dismissed for a valid reason related to the conduct or capacity of the employee or operational requirements of the employer. Section 69 of the Labour Code provides that an employee must be given the written statements providing the reasons for dismissal.

Section 63(1) of the Labour Code provides that either party may terminate the contract upon giving the following notice:

- where the employee has been continuously employed for one year or more, one month's notice;
- where the employee has been continuously employed for more than six months but less than one year, a fortnight's notice; and
- where the employee has been continuously employed for less than six months, one week's notice.

Termination for misconduct

What fair process requirements exist?

Section 69(1) of the Labour Code provides that the employer shall provide a written statement of the reason for dismissal to any employee who is dismissed. Such statement shall be given to the employee either before dismissal, at the time of dismissal or within four weeks of the dismissal having taken effect.

What substantive fairness requirements exist?

An employer is required to give the employee an opportunity to be heard and to defend themselves against the allegations made unless, in light of the prevailing circumstances and the reason for dismissal, the employer cannot be reasonably expected to provide this opportunity.

An employer is entitled to summarily dismiss an employee where the employee has committed a serious misconduct. The reason that summary dismissal is permitted is that if the misconduct is serious, it would be unreasonable for the employer to continue to employ the employee during the notice which ordinarily would have been given.

What are the applicable notice periods?

Section 63(1) of the Labour Code provides that either party may terminate the contract upon giving the following notice:

- where the employee has been continuously employed for one year or more, one month's notice;
- where the employee has been continuously employed for more than six months but less than one year, a fortnight's notice; and
- where the employee has been continuously employed for less than six months, one week's notice.

What are the dispute resolution mechanisms?

The Labour Court has exclusive jurisdiction over all unfair labour practices and unfair dismissals.

What remedies are available to employees?

Where an employee has been unfairly dismissed the courts may make an order for their reinstatement and/or compensation in line with s73 of the Labour Code.

Is third party approval for termination/ termination documents required?

Not required.

Termination for incapacity

What fair process requirements exist?

Section 123(5) of the Labour Code provides that there must be a certificate of incapacity signed by a registered medical practitioner certifying that the employee would be unable to comply with their employment duties due to an accident, illness or physical or mental incapacity.

The normal notice period in s63(1) of the Labour Code applies: where the employee has been continuously employed for one year or more, one month's notice; where the employee has been continuously employed for more than six months but less than one year, a fortnight's notice; where the employee has been continuously employed for less than six months, one week's notice.

What substantive fairness requirements exist?

The employer shall provide a written statement of the reason for dismissal to any employee who is dismissed. Such statement shall be given to the employee either before dismissal, at the time of dismissal or within four weeks of the dismissal having taken effect (s69(1) of the Labour Code)

What are the dispute resolution mechanisms?

Section 24 of the Labour Code provides that the Labour Court has exclusive jurisdiction over all unfair labour practices and unfair dismissals.

What remedies are available to employees?

Where an employee has been unfairly dismissed the courts may make an order for their reinstatement and/or compensation. This is provided for in s73 of the Labour Code.

Is third party approval for termination/ termination documents required?

Yes, insofar as it relates to incapacity due to sickness or injury. A registered medical practitioner must certify that the employee is unable to work (s123(5) of the Labour Code)



THE EMPLOYEE WILL ALSO BE ENTITLED TO A REPATRIATION ALLOWANCE.

Termination for operational requirements

What fair process requirements exist?

The normal notice period in s63(1) of the Labour Code applies: where the employee has been continuously employed for one year or more, one month's notice; where the employee has been continuously employed for more than six months but less than one year, a fortnight's notice; where the employee has been continuously employed for less than six months, one week's notice.

Further, in the Serame Khampepe decision of the Lesotho Labour Code, the court held that employees to be dismissed for operational reasons must be informed within a reasonable period.

What substantive fairness requirements exist?

The Labour Code does not provide for these.

What are the dispute resolution mechanisms?

The Labour Court has exclusive jurisdiction over all unfair labour practices and unfair dismissals.

What remedies are available to employees?

Section 73 of the Labour Code outlines that the Labour Court may award reinstatement of the employee and/or compensation in the circumstances.

Is third party approval for termination/ termination documents required?

This is not provided for in the Labour Code.

Notice requirements

The normal notice period in s63(1) of the Labour Code applies: where the employee has been continuously employed for one year or more, one month's notice; where the employee has been continuously employed for more than six months but less than one year, a fortnight's notice; where the employee has been continuously employed for less than six months, one week's notice.

Termination benefits

Are any termination benefits payable in the event of a dismissal for misconduct?

Section 79(2) of the Labour Code states that an employee who has been fairly dismissed for misconduct shall not be entitled to severance payment.

Are any termination benefits payable in the event of a dismissal for incapacity?

Section 79(1) of the Labour Code provides that an employee who has completed more than one year of continuous service with the same employer shall be entitled to receive, upon termination of their services, a severance payment equivalent to two weeks' wages for each completed year of continuous service with the employer. Further, an employee will be entitled to benefits and repatriation allowance at termination minus the liabilities owed to the employer.

Are any termination benefits payable in the event of a dismissal for operational requirements?

Retrenched employees are entitled to severance pay if they have had the same employer for at least one continuous year (s79(1) of the Labour Code). The employer will then pay the employee the equivalent of two weeks' pay (the pay the employee receives at the time of the termination of the contract) for every completed year service. The employee will also be entitled to a repatriation allowance.

Are any termination benefits payable in the event of voluntary resignation by an employee?

An employee who has completed more than one year of continuous service with the same employer shall be entitled to receive, upon termination of their services, a severance payment equivalent to two weeks' wages for each completed year of continuous service with the employer. An employee shall also be entitled to all accrued benefits. (s79(1) of the Labour Code).

Are any termination benefits payable in the event of retirement?

An employee who has completed more than one year of continuous service with the same employer shall be entitled to receive, upon termination of their services, a severance payment equivalent to two weeks' wages for each completed year of continuous service with the employer. An employee shall also be entitled to all accrued benefits. (s79(1) of the Labour Code).

RETIREMENT

What is the normal retirement age?

There is no fixed retirement age prescribed by the Labour Code. The retirement age will depend on the practice of the employer and the industry in which the employer operates.

POST-TERMINATION RESTRAINTS

Enforceability of non-compete provisions

Can contractual non-compete provisions be enforced?

Whereas they are not regulated by the law, the common law steps in by providing that they are *prima facie* unenforceable unless they are reasonable in the eyes of the law.



**THERE IS
NO FIXED
RETIREMENT
AGE** PRESCRIBED BY
THE LABOUR CODE.

Confidentiality and trade secrets

What protections are offered to employers in respect of their confidential information/trade secrets?

The common law duty to respect the interests of the employer and act in good faith regulate this as the legislation does not provide for protection of confidential information. Employers would have to resort to the common law to protect their confidential information.





MALAWI

Official language(s):

English

Population (approx.):

18 708 081

Unemployment rate (2018):

5.7%

Name of court for labour matters:

Industrial Relations Court

Are pre-employment checks permissible?

Yes, provided they do not amount to discrimination.

Dismissal for misconduct: is there a requirement for procedural and substantive fairness?

Yes

Immigration: must foreign employees obtain a work visa?

Yes





BACKGROUND

Applicable legislation

- Employment Act, No 6 of 2000 (Employment Act);
- Pension Act, No 6 of 2011 (Pension Fund Act); and
- Workers' Compensation Act, No 7 of 2000 (Workers Compensation Act).

Regulatory rating

✓ *Heavily regulated.*

HIRING DECISIONS

Can employers conduct pre-employment checks?

There are no restrictions on pre-hire checks being conducted by employers, provided it is not carried out in a manner that amounts to discrimination.

What hiring options are available to employers?

A contract of employment shall be in one of the following forms:

- for an unspecified period of time;
- for a specified period of time; or
- a contract for a specific task.

IMMIGRATION

Are there any limitations placed on employers' discretion to determine new hires?

There are no limitations provided for in law with regards to the hiring of foreign employees.

CONDITIONS OF EMPLOYMENT

Are there any formal requirements for employment contracts?

An employee must be given written confirmation of the particulars of their employment within one (1) month of the employee reporting for duty.

The written statement of the particulars of the employee's employment must include the following information:

- the names of both parties;
- the date of commencement of the employment contract;
- the rate of remuneration and the method of calculating same;
- the nature of the work to be performed;
- the normal working hours;
- termination provisions; and
- any disciplinary rule applicable to the employee.

Are probationary periods permitted in Malawi?

Yes. In terms of section 26 of the Employment Act, an employment contract in respect of a skilled employee may contain a probationary period. The probationary period may be agreed between the parties but may not exceed a period of twelve (12) months. During the probation period, either party may terminate the employment relationship at any time, without notice.

Are fixed-term contract of employment allowed?

Yes. A fixed-term contract may either be for a specified period of time or for the performance of a specific task. Contracts for a specified period

of time terminate automatically on the date specified for termination unless the contract has been tacitly or expressly renewed or prolonged. No notice is required for termination. A contract which is for the completion of a specified task, shall terminate on the completion of the task. No notice of termination shall be required from either party.

Where a contract for a specified time frame/task is utilized to fill a post which is connected with normal and permanent activity, it shall be deemed to be a contract of employment for an unspecified period of time, i.e. a permanent contract. Where an employee is regularly and repeatedly contracted on a contract for a specified task which can be completed in less than twenty-four (24) hours, the contract shall be deemed to be a contract of employment for an unspecified period of time i.e. a permanent contract.

Minimum employment rights

Are any employees excluded from minimum employment rights?

The Employment Act does not apply to members of the armed forces, prison service or the police force, except those members employed in a civilian capacity.



**THE MINISTRY OF
LABOUR IS EMPOWERED
TO ISSUE REGULATIONS
OR ORDERS AS TO THE
MINIMUM WAGE.**



BONUS PAYMENTS ARE PAID AT THE DISCRETION OF THE EMPLOYER.

Is there a minimum wage requirement?

The Ministry of Labour is empowered to issue regulations or orders as to the minimum wage. As of 2019, the Minimum wage is K962 Malawi kwacha per day in both rural and urban areas.

What are the maximum working hours?

According to section 36 of the Employment Act, an employee may not be required to work in excess of forty-eight (48) hours during any week, excluding any overtime. Further, employers are not permitted to require employees to work for more than six (6) consecutive days without a period of rest, comprising of at least twenty-four (24) consecutive hours, which shall be taken on a customary day of rest or a day agreed upon between the employer and employee(s).

Work in excess of forty-eight (48) hours is not strictly applicable to guards and employees in “exempt categories”, as guards and exempted workers may be required to work in excess of 48 hours where circumstances demand, provided that he/she is remunerated at 50% of his/her basic salary for the overtime.

What are the minimum requirements relating to overtime?

Save for those employees who are covered by an exemption from maximum working hours, in terms of section 39 of the Employment Act, employees are entitled to the following classes of overtime:

- Ordinary overtime, for time worked on a working day in excess of the hours normally worked; which is paid at the hourly rate of not less than 1.5 times the hourly wage.
- Day off overtime, for time worked by an employee on a day which he would otherwise be off duty; which is paid at the hourly rate of not less than 2 times the hourly wage.
- Holiday overtime, for time worked on a public holiday, which is paid at the hourly rate of not less than 2 times the hourly wage.

What the weekly rest and public holidays requirements?

Each employee working six (6) consecutive days will be entitled to a weekly rest of twenty-four (24) consecutive hours, which shall be taken on a customary day of rest or as agreed between the parties. The weekly rest period should be granted simultaneously to all employees concerned in each undertaking. The weekly rest period is not applicable to employees holding high managerial positions.

Employees are entitled to be remunerated on a public holiday, subject to certain conditions related to an employee’s absence from work on the days preceding

or following a public holiday. An employee required to work on a public holiday, who fails to do so without reasonable cause shall not be entitled to payment in respect of the public holiday.

What are the minimum requirements relating to annual leave?

In terms of section 44 of the Employment Act, an employee is entitled to annual leave with pay, on the following basis:

- Eighteen (18) working days if he/she works a six (6) day week; or
- Fifteen (15) working days if he/she works a five (5) day week.

Annual leave must be taken within six (6) months of the entitlement falling due. Leave may be deferred and accumulated by mutual agreement between the employee(s) and employer. Where any annual leave has accrued to an employee at the end of their contract of employment, the employer shall pay the employee *in lieu* of the accrued annual leave.

Where the employee’s length of service is less than the length of service required for the granting of the full annual leave entitlement in law, the employee shall be entitled to a pro-rata leave entitlement according to their length of service in the given year.

What are the minimum requirements relating to sick leave?

Section 46 of the Employment Act provides that an employee who has completed 1 (one) years’ continuous service with the

same employer is entitled to four (4) weeks sick leave on full pay and thereafter eight (8) weeks sick leave on half pay, per annum. An employee shall not be entitled to sick leave unless the employee produces a certificate from a registered medical practitioner stating the nature of the employee’s incapacity.

What are the minimum requirements relating to parental leave?

In terms of section 47 of the Employment Act, a female employee is entitled to eight (8) weeks maternity leave on full pay in every three (3) year cycle. In the event of illness arising out of pregnancy confinement effecting either the employee or their child, an employer shall grant an employee additional maternity leave as the employer may deem fit, subject to the employer receiving a certificate from a medical practitioner. Paternity leave is not provided for in law.

What are the minimum requirements relating to family responsibility leave?

Family responsibility leave is not provided for in law.

Are employees automatically entitled to bonus payments? If not, is it common that bonuses are paid?

Bonus payments are paid at the discretion of the employer.



TERMS AND CONDITIONS OF EMPLOYMENT MAY NOT BE CHANGED WITHOUT THE EMPLOYEE'S CONSENT.

Changing terms and conditions of employment

Are employees automatically entitled to periodic increases, alternatively how do the parties normally achieve consensus on increases?

This is not an entitlement provided for in law but may be agreed between the parties.

Can employment terms be changed without achieving agreement with the employees?

Terms and conditions of employment may not be changed without the employee's consent. Further, changes cannot be made that are contrary or less favourable to that provided for in law.

Are employees commonly represented in their interactions with employers relating to changes to employment terms?

Yes.

TERMINATION OF EMPLOYMENT

Introduction

The law recognises three grounds for valid dismissal – conduct or capacity of the employee or the employer's operational requirements.

Can an employee be dismissed for misconduct?

Yes, it is one of the valid reasons for dismissal.

What notice periods are applicable?

Notice periods in the event of dismissals are determined with reference to an employee's remuneration cycle. For example:

- where an employee is paid on a monthly basis, they are entitled to one (1) months' notice;

- where an employee is paid on a fortnightly basis, an employee is entitled to a fortnight's notice where the employee has been employed for less than five (5) years; and
- one (1) months' notice where the employee has been continuously employed for at least five (5) years.

Where an employee is paid on a weekly basis they are entitled to notice of termination as follows:

- one (1) weeks' notice where the employee has been employed for less than two (2) years;
- a fortnight's notice where the employee has been continuously employed for a period of not less than two (2) years but not exceeding five (5) years; and
- one (1) months' notice where the employee has been continuously employed for at least five (5) years.

Where an employee is paid on a daily or hourly rate, they are entitled to notice of termination on the following basis:

- one (1) days' notice where the employee has been employed for less than six (6) months;
- one (1) weeks' notice where the employee has been continuously employed for a period more than six (6) months but not exceeding two (2) years;
- a fortnight's notice where the employee has been continuously employed for a period of more than two (2) years but less than five (5) years; and
- one month's notice where the employee has been continuously employed for a period of at least five (5) years.

Can an employee be dismissed for incapacity?

Yes, dismissal based on incapacity is a valid ground for dismissal.

What notice periods are applicable?

Notice periods in the event of dismissals are determined with reference to an employee's remuneration cycle. For example:

- where an employee is paid on a monthly basis, they are entitled to one (1) months' notice;
- where an employee is paid on a fortnightly basis, an employee is entitled to a fortnight's notice where the employee has been employed for less than five (5) years; and
- one (1) months' notice where the employee has been continuously employed for at least five (5) years.

Where an employee is paid on a weekly basis they are entitled to notice of termination as follows:

- one (1) weeks' notice where the employee has been employed for less than two (2) years;
- a fortnight's notice where the employee has been continuously employed for a period of not less than two (2) years but not exceeding five (5) years; and
- one (1) months' notice where the employee has been continuously employed for at least five (5) years.

Where an employee is paid on a daily or hourly rate, they are entitled to notice of termination on the following basis:

- one (1) days' notice where the employee has been employed for less than six (6) months;
- one (1) weeks' notice where the employee has been continuously employed for a period more than six (6) months but not exceeding two (2) years;
- a fortnight's notice where the employee has been continuously employed for a period of more than two (2) years but less than five (5) years; and
- one month's notice where the employee has been continuously employed for a period of at least five (5) years.

What dispute resolution mechanisms are available to the employee when the employee is dismissed for misconduct or poor work performance?

Within three (3) months of the date of dismissal, an employee shall have the right to refer a dispute to the District Labour Officer alleging that he has been unfairly dismissed. Where the District Labour Officer fails to settle the matter within one (1) month, the matter may be referred to the Industrial Relations Court.

What remedies are available to the employee when the employee is dismissed for misconduct or poor work performance?

The remedies available are reinstatement, re-engagement or compensation.

Can an employee be dismissed for operational requirements?

Yes, dismissal based on the employer's operational requirements is permitted.

Are any termination benefits payable in the event of a dismissal for operational requirements?

According to section 35(1) of the Employment Act read together with the First Schedule of same, where an employee has served between one (1) and ten (10) years with the same employer, they are entitled to two (2) weeks' wages for each completed year of service. Further, where the employee has been employed with the same employer for more than ten (10) years, they are entitled to four (4) weeks' wages for each completed year of service.

What dispute resolution mechanism are available to the employee when the employee is dismissed for operational requirements?

Within three (3) months of the date of dismissal, an employee shall have the right to refer a dispute to the District Labour Officer alleging that he/she has been unfairly dismissed. Where the District Labour Officer fails to settle the matter within one (1) month, the matter may be referred to the Industrial Relations Court.



DISMISSAL BASED ON INCAPACITY IS A VALID GROUND FOR DISMISSAL.

Employee remedies?

The remedies available are reinstatement, re-engagement or compensation.

Third party approval for termination/ termination documents?

This is not specified in the Employment Act.

SOCIAL BENEFITS, TAX AND PENSIONS

Workplace injuries

In the event of workplace injury/disease, will employees be entitled to some form of compensation?

An employee is entitled to compensation where they contract an injury or disease arising out of and/or in the course of their employment.

Return to work

Are employers obliged to reintegrate workers into the workplace after having recovered from workplace injuries?

This requirement is not provided for in law.

Medical aid benefits

Are employers obliged to provide employees with membership to medical aids or other assistance with medical costs?

Employers are not obliged to provide employees with membership to medical aid or provide medical cost assistance.

Taxation

What are the employer's obligations in respect of employee income tax?

Malawi has three tax brackets– 15%, 30% and 35%, which apply to employees on the basis of their income.

Other social benefits

What are other social benefits contributions must be made?

In terms of section 12 of the Pension Act, employers must make a payment of 10% of the salaries of employees to the National Pension scheme and employees must contribute 5%.

DATA PRIVACY

What data privacy (if any) obligations rest on employers in respect of their employees?

Malawi are in the process of drafting data protection legislation. Presently, the Electronic Transactions and Cyber Security Act 33 of 2016 criminalises offences related to *inter alia* information communication technologies.

In addition, an employer is bound by the common law which obliges them to act in good faith, maintain trust and fidelity which encompasses the obligation to protect employees' personal information.



BUSINESS TRANSFERS

Are employees automatically transferred to a new employer in the event of transfer of a business as a going concern?

In terms of section 32 of the Employment Act, the transfer of employees is not automatic and requires the consent of the employees to be transferred. Where the employees' consent, the rights and obligations of the old employer automatically transfer to the new employer and anything done by the old employer in relation to the employees shall be deemed to have been done by the new employer.

Is consultation or information disclosure required prior to transfer, and if so who must be consulted/ receive information, and what disclosures must be made?

Consultation or disclosure is not required by law.

Joint and several liability for employers?

This is not specified in the Employment Act.

Is it possible to change terms and conditions of employment in the context of a business transfer?

This is not possible unless the employer obtains the employee's consent.

Briefly describe the seriousness of consequences in the event of non-compliance.

This is not outlined in the Employment Act.

RETIREMENT

What is the normal retirement age?

60 years old.

Are any termination benefits payable in the event of retirement?

If the employee has made a contribution of twenty (20) years to an employer, they are entitled to the full retirement pension.

POST-TERMINATION RESTRAINTS

Enforceability of non-compete provisions

Can contractual non-compete provisions be enforced? Is it common for such "restraints" to form part of employment contracts?

In the *Madeya v First Merchant Bank* case, the court held that all workers are entitled to work but restraints of trade are valid if they are reasonable and not injurious to the public interest. Thus, Malawi follows the common-law principles that restraints of trade must be reasonable with regard to their nature and scope to be enforced.

CONFIDENTIALITY AND TRADE SECRETS

What protections are offered to employers in respect of their confident information/trade secrets?

As part of the implied duty of good faith and trust, employees cannot reveal the confidential information of their employers.



MAURITIUS

Official language(s):

English

Population (approx.):

1m

Unemployment rate (2018):

7%

Name of court for labour matters:

Labour Court

Are pre-employment checks permissible?

Yes

Dismissal for misconduct: is there a requirement for procedural and substantive fairness?

Yes

Immigration: must foreign employees obtain a work visa?

Yes





BACKGROUND

Applicable legislation

- Employment Rights Act, No 33 of 2008 (to be repealed by the Workers' Rights Act);
- Workers Rights Act, No 20 of 2019 (Workers' Rights Act);
- Occupational Health and Safety Act, No 28 of 2005;
- The Non-Citizens (employment restriction) Act, No 15 of 1970;
- Additional Remuneration and Other Allowances Act 2019 (Additional Remuneration and Other Allowances Act);
- Employment Relations Act, No 32 of 2008;
- National Minimum Wage Regulations, 2017;
- Data Protection Act, 2017 (Data Protection Act);
- End of Year Gratuity Act, No 21 of 2001; and
- The Employment Relations Amendment Act, No 21 of 2019

Regulatory rating

✓ *Heavily regulated.*

HIRING DECISIONS

Minimum working age and Restrictions on New Hires

Subject to the exception of light work or work in a family business, no person may employ a child in any occupation. A child is defined in the Workers' Rights Act as anyone under the age of 16 years old.

In addition, in terms of section 9 of the Workers' Rights Act, no person shall employ or continue to employ a person between the ages of 16 and 18 years of age where:

- the nature of the work is likely to be detrimental to their overall health or development; or
- upon notification from a supervising officer of the Ministry responsible for labour and employment relations that the nature of the work is unsuitable or is likely to interfere with the workers' education.

Employers are obliged to keep a register of workers between the ages of 16 and 18, together with their full name, address, date of birth and any other details that may be prescribed from time to time.

In addition, part-time workers should be given preference when full-time positions become available.

Can employers conduct pre-employment checks?

Pre-hire checks are permissible in Mauritius. A typical pre-hire check involves the verification of a workers' references as well as a criminal background check.

What hiring options are available to employers?

The following hiring options are available to employers:

- **Deeming work agreements:** an agreement in terms of which a worker is required to perform tasks specified by the employer on the day he/she is asked to report for duty. This is a flexible working arrangement and allows employers to utilise a worker for various tasks that may arise, rather than employing a worker for a specific role;
- **Full-time work agreements/Permanent employment;**
- **Apprenticeship agreements:** an agreement for the training and development of a worker;
- **Fixed-term agreements:** an agreement for the performance of a specified task for a specified period of time, which task is of a temporary nature;
- **Part-time work agreements:** an agreement in terms of which a worker is paid with reference to the number of hours work;

- 
- **Agreements to perform part-time or full-time work:** In terms of section 15 of the Workers' Rights Act, a full-time worker may enter into an agreement with an employer to perform part-time work provided that the agreement is for a specified period of time and the worker has the option to revert to full-time employment. In addition, a part-time worker may enter into an agreement to perform full-time work provided the agreement is reduced to writing and the worker is granted the option to revert to part-time employment;
 - **Compromise Agreements:** A worker may enter into a "compromise" agreement with his/her employer as a means to resolve a dispute in relation to his/her termination, short payment or non-payment. A compromise agreement is only valid where a worker has been advised as to its terms and conditions by either a legal practitioner, an official or representative of a trade union or an official of the Ministry responsible for labour and employment relations; and
 - **Atypical work agreements:** in terms of section 17 of the Workers' Rights Act, subject to certain limitations, an atypical work agreement is a nonstandard work agreement in exchange for remuneration. An atypical work agreement includes *inter alia* (i) a homemaker, (ii) an online platform worker and (iii) a worker, other than a home worker or online platform worker, who may work for more than one employer and who chooses when and where they work.



**PRE-HIRE
CHECKS
ARE PERMISSIBLE
IN MAURITIUS.**



EMPLOYERS WHO EMPLOY NON-CITIZENS WITHOUT THE REQUISITE WORK PERMIT ARE LIABLE TO A FINE AND/OR IMPRISONMENT.

Are fixed-term contract of employment permissible?

In terms of section 13 of the Workers Rights Act, an employer may enter into a fixed-term contract with a worker for a specified period of time in line with its temporary needs, under the following circumstances:

- for the execution of a specific task which is temporary and non-recurring;
- work of a temporary or seasonal nature or work arrangements on a short-term basis which are usually project based or related to an update in the product market;
- to replace a worker who is on approved leave or a worker who has been suspended;
- for the purpose of providing training to the workforce;
- for a specific training agreement; or
- in accordance with a specific training scheme set up by the government or any other statutory institution for a specific duration.

A fixed-term contract must be reduced to writing and specify the nature of the work, the requisite skills and the duration

of the agreement. No worker, other than a migrant worker, may be employed on a fixed-term basis where the nature of the work is permanent and/or ongoing or relates to the continuous normal business activities of the employer.

IMMIGRATION

What are the requirements in relation to hiring foreign workers?

A non-citizen may only be employed in Mauritius where they are in possession of a valid work permit and they are engaged in the work specified in the said permit, subject to any limitations and conditions for which the permit is granted. Employers who employ non-citizens without the requisite work permit are liable to a fine and/or imprisonment. All applications for work permits must be directed to the Minister responsible for labour and employment relations who has an absolute discretion whether to reject or approve the application.

EMPLOYMENT CONTRACT FORMALITIES

Are there any formal requirements for employment contracts?

An employer shall provide every worker engaged for more than one month with a written statement of the particulars of their employment in the prescribed form set out in Schedule 1 of the Workers Rights Act, within 14 days of their employment. The prescribed form in Schedule 1 of the Workers Rights Act includes particulars

such as the job title, conditions of work, remuneration and hours of work. A copy of the agreement is to be submitted to the supervising officer of the Ministry responsible for labour and employment relations within 30 days.

Worker Agreements that are Void

In terms of section 18 of the Workers Rights Act, the following worker agreements are void:

- agreements to be bound by the act or omission of another person;
- agreements for the payment of remuneration in intervals exceeding a month;
- any agreement containing the aforementioned prohibitions; and
- subject to the provisions of the Employment Rights Act related to remuneration being privileged debt, an agreement in terms of which a worker agrees to relinquish their rights under the Workers' Rights Act.

In addition, in terms of section 7 of the Minimum Wage Regulations, 2017, any agreement in terms of which a worker contracts out of his/her right to receive the national minimum wage shall be void.

Capacity to enter into employment agreements

In terms of section 10 of the Workers Rights Act, all persons over the age of 16 are competent to enter into work agreements and are for the purposes of the agreement, deemed to be of full age and capacity.

Are probationary periods permitted in Mauritius?

A contract of employment may be subject to a probation period. The probation period is usually a term of the contract and may not exceed 90 days. However, the worker may choose to extend the probation period or terminate the employment relationship after such probation period.

CONDITIONS OF EMPLOYMENT AND MINIMUM EMPLOYMENT RIGHTS

Are any workers excluded from minimum employment rights?

The following persons do not fall within the ambit of the definition of a "worker" for the purposes for the Workers Rights Act:

- An independent contractor;
- A person engaged in a training scheme provided by the government or through private-public partnership with the purpose of placing job seekers in employment;
- Persons whose basic wage/salary rate is in excess of MUR600,000 per annum, subject to certain limitations; and
- Persons performing atypical forms of employment, subject to certain limitations.

In addition, subject to certain limitations, the Workers Rights Act does not apply to the following category of persons:

- atypical workers;
- a public officer and local government officer;
- a worker of a statutory body who is or has opted to be governed by the terms and conditions in a report of the Pay Research Bureau; and
- a worker who is employed on terms and conditions contained in a report of the Pay Research Bureau.

Is there a minimum wage requirement?

In terms of the National Minimum Wage Regulations, 2017, the national minimum wage of all workers other than part-time workers is MUR8,140 per month. The National Minimum Wage regulations do not however entitle an employer to reduce a workers' remuneration to the minimum wage, neither does it bar an employer from paying a worker in excess of the national minimum wage.

What are the maximum working hours?

The normal working hours of a worker, other than a part-time worker or person employed as a caregiver or private nurse shall be 45 hours per week, excluding meal breaks and rest periods. Subject to the operational requirements of an employer, the normal working hours of a worker shall commence on any day of the week.

No other worker, other than a person employed as a care giver or private nurse in exceptional/special circumstances, shall be required to work more than 12 hours per day.

All workers shall be entitled to a daily rest period of no less than 11 consecutive hours per day. The normal working hours of workers between the ages of 16 and 18 shall not fall between 10pm and 5am.

What are the minimum requirements relating to overtime?

A worker and an employer may agree on the number of hours of work to be performed in excess of the stipulated hours of work. Where a worker works on a public holiday or outside the normal working hours, he shall be remunerated for every hour of work performed, subject to the provisions of section 24(5) of the Workers Rights Act.



What are the minimum requirements related to overtime remuneration?

A worker is entitled to remuneration for overtime as follows:

- 1.5 times a worker's normal rate for any hours in excess of normal working hours;
- 2 times a worker's normal rate for overtime worked on a public holiday during normal working hours on a week day; and
- 3 times a worker's normal rate for overtime worked in a public holiday after normal working hours.



ANY OUTSTANDING SICK LEAVE SHALL BE ACCUMULATED TO A MAXIMUM OF 90 WORKING DAYS.

In terms of section 24(5) of the Workers Rights Act, an employer may enter into an agreement with a worker in terms of which it is agreed that the workers salary or wages includes payment for public holidays and overtime provided that the maximum number of overtime hours on weeks days and public holidays is specified in the agreement.

What the weekly rest and public holidays requirements?

The stipulated weekly rest day is Sunday. However, where an employer operates 7 days a week due to their operational requirements, the weekly rest day shall be two Sundays in a month. All workers shall be entitled to time off on national public holidays.

What are the minimum requirements relating to annual leave?

A worker who remains in continuous employment with the same employer for a period of 12 consecutive months, shall, during each subsequent period of 12 months while he remains in continuous employment, be entitled to 20 working

days' annual leave. An additional 2 days leave will also be allocated aside from the 20 days annual leave. A worker who wishes to take more than one day's annual leave consecutively, shall, except where reasonable cause is shown, give his employer at least 48 hours' advance written notice.

What are the minimum requirements relating to sick leave?

A worker that works for a continuous period of 12 months for an employer is entitled to 15 working days sick leave on full pay. Additional sick leave must be duly certified by a medical practitioner and may be deducted from the workers accumulated sick leave and shall be on full pay. Any outstanding sick leave shall be accumulated to a maximum of 90 working days.

Where a worker absents himself on ground of illness, he shall, unless reasonable cause is shown and except where the employer is aware of the nature of the illness, notify his employer of his illness on the first day of absence.



What are the minimum requirements relating to parental leave?

A worker who remains in continuous employment with the same employer for a period of 12 consecutive months, on production of a medical certificate is entitled to 14 weeks maternity leave on full pay. Maternity leave may commence seven weeks prior to the birth of a child, with the remaining seven weeks of the maternity leave entitlement to follow the birth.

In addition, where a female worker, who has been in continuous employment with the same employer for a period of 12 consecutive months, adopts a child aged less than 12 months, the worker shall, on producing a certified copy of the relevant Court order and a copy of the act of birth of the child, be entitled to 14 weeks' maternity leave on full pay. Maternity leave in the event of adoption is limited to female workers.

A female worker, who remains in the continuous employment of the same employer for a period exceed 12 months, shall, on producing a medical certificate, be entitled to a maternity leave allowance of MUR3,000, payable within 7 days of giving birth.

A male worker who has been in continuous employment with the same employer for a period of 12 months, shall be entitled to 5 continuous working days paternity leave where their spouse gives birth to a child. Paternity leave must be taken within 2 weeks of the birth of a child.

In order to access paternity leave benefits, a male worker is required to provide his employer with a certificate issued by a medical practitioner certifying or notifying that his spouse has given birth to a child; together with a written statement signed by him that he is living with his spouse under a common roof.

What are the minimum requirements relating to family responsibility leave?

In terms of section 48 of the Workers Rights Act, a worker who remains in continuous employment with the same employer for a period of 12 consecutive months is entitled to:

- 6 working days' special leave on full pay on the occasion of the celebration of his first civil or religious marriage;
- 3 working days' special leave on full pay on the occasion of the first civil or religious marriage of his son or daughter; and/or
- 3 working days' special leave on full pay in the event of death of a spouse, child, parent or sibling.

Other Leave Entitlements

Vacation Leave

Vacation leave is provided to workers who have been in the service of the same employer for a period of 5 years or more. A worker is entitled to a maximum of 30 days' vacation leave whether taken consecutively or otherwise, for every period of 5 consecutive years of continuous employment.

Juror's leave

A worker is entitled to Juror's leave where they have issued with summons to attend service as juror. The duration of the entitlement is not specified in the Workers Rights Act and it is assumed that the leave entitlement will be determined with reference to the duration of the proceedings for which the worker has been summoned to serve as a juror.

Leave to participate in international sports events

Where a worker is selected or nominated to represent Mauritius in an international sport event, the worker is entitled to paid leave to participate in the said event upon adducing documentary evidence to support their selection or nomination. International Sports Events leave shall be for the duration of the event or for a longer period should same be necessary.

Leave to attend court

A worker shall be granted leave to attend Court regarding any matter in which he is a party or a witness. Where the worker is called to attend court on behalf of the employer, the leave to attend court shall be remunerated.

Are workers automatically entitled to bonus payments? If not, is it common that bonuses are paid?

As at 31 December of each year, a worker shall be entitled to the payment of a year-end bonus equivalent to one twelfth of his/her earnings for that year from his or her employer, provided they have been in continuous employment with the same employer for the whole or part of the year. A worker shall be entitled to the year-end bonus on the basis of their duration of service with their employer as at 31 December.

Certain workers whose conditions of employment are governed by regulations stipulated in section 54(2) such as the Sugar Industry (Agricultural Workers) (Remuneration Order) Regulations 1983 are excluded from the provisions of the year-end bonus.

The full balance of a worker's year-end bonus is due on the last working day of the same year.



Changing terms and conditions of employment

Can employment terms be changed without achieving agreement with the workers?

No, the consent of workers must be obtained.

Are workers commonly represented in their interactions with employers relating to changes to employment terms?

Yes.



A WORKER SHALL BE GRANTED LEAVE TO ATTEND COURT REGARDING ANY MATTER IN WHICH HE IS A PARTY OR A WITNESS.

TERMINATION OF EMPLOYMENT

Introduction

An employer may dismiss a worker on the basis of misconduct, incapacity or for reasons of operational requirements. In terms of section 64 of the Workers Rights Act, a contract of employment may not be terminated on the following grounds:

- a worker's race, colour, caste, national extraction, social origin, place of his origin, age, pregnancy, religion, political opinion, sex, sexual orientation, HIV status, impairment, marital status or family responsibilities;
- a worker's absence from work during maternity leave and/or for the purpose of nursing her unweaned child;
- a worker's temporary absence from work due to injury or sickness duly notified to the employer and certified by a medical practitioner;
- a worker becoming or being a member of a trade union, seeking or holding trade union office, or participating in trade union activities outside working hours, or, with the consent of the employer, within working hours;

- a worker, in good faith, filing a complaint, or participating in proceedings, against an employer;
- involving alleged breach of any terms and conditions of employment; or
- a worker exercising any of the rights provided for in the Workers Rights Act or any other enactment, agreement, collective agreement or award.

General Termination Notice Requirements

Save in relation to the expiry of a fixed-term agreement, a party to a work agreement may, except where he is prohibited by an enactment from doing so, terminate a work agreement on the expiry of a notice of termination.

An employer shall, at the time of notifying a worker of the termination of his employment, state the reason for the termination. Notice may be verbal or written, no less than 30 days, subject to any agreement to the contrary, and shall be given at a reasonable time. Any party may, *in lieu* of giving notice of termination, pay to the other party the amount of remuneration the worker would have earned had he remained in employment during the period of notice. An employer shall, during the notice period, allow, on satisfactory proof of the purpose of the request, the worker reasonable time off, without loss of pay, to seek further employment.



Can a worker be dismissed for misconduct?

A worker may be dismissed on the basis of misconduct, subject to an employer following the procedure and abiding by the notice periods set out in the Workers' Rights Act. Before a charge of alleged misconduct is levelled against a worker, an employer may carry out an investigation into all the circumstances of the case. The notice period for termination of employment on the basis of misconduct set out in the Workers Rights Act shall not commence prior to the completion of the investigation. Where the investigation against a worker yields a negative result and the worker is suspected of misconduct, the employer may formulate a charge against the worker. Where the employer decides to hold a disciplinary hearing, he shall, at the request of the worker, provide him with such information or documents as may be relevant to the charge.

Delivery of a Charge Sheet

The charge sheet and a notification of a termination of agreement shall be issued by delivering a notice to the worker in person or by sending the notification or notice by registered post to the usual or last known place of residence of the worker. Where a worker refuses to accept delivery of the notification or notice; or fails to take delivery of the notification or notice after being notified that it awaits him at a specified post office, the notification or notice shall be deemed to have been duly served on the worker on the day he refuses to accept delivery thereof or is notified that it awaits him at the specified post office.



BEFORE A CHARGE OF ALLEGED MISCONDUCT IS LEVELLED AGAINST A WORKER, AN EMPLOYER MAY CARRY OUT AN INVESTIGATION INTO ALL THE CIRCUMSTANCES OF THE CASE.

Notice Periods Applicable to Termination on the basis of Misconduct

No employer shall summarily terminate a worker's agreement for reasons related to the worker's alleged misconduct, save where the charge relates to criminal proceedings, unless:

- the employer has, within 10 days of the day on which he becomes aware of the alleged misconduct, notified the worker of the charge against him/her;
- the worker has been afforded an opportunity to answer the charge;
- the worker has been given at least 7 days' notice to answer;
- the employer cannot in good faith take any other course of action; and
- the termination is affected no later than 7 days after the worker has answered the charge made against him, or where the charge is the subject of an oral hearing, after the completion of such hearing.

Can a worker be dismissed for incapacity?

An employer may dismiss a worker for reasons related to their capacity provided an employer follows the process set out in the Workers Rights Act.

What notice periods are applicable?

No employer shall terminate a worker's agreement for reasons related to the worker's poor performance, unless the worker has been afforded an opportunity

to answer any charge related to the alleged poor performance, the worker has been given at least 7 days' notice to answer the charge; the employer cannot, in good faith, take any other course of action; and the termination is effected within 7 days of the completion of the disciplinary hearing.

Suspension

Where an employer suspends a worker pending the outcome of disciplinary proceedings on account of the worker's alleged misconduct or poor performance, such period of suspension shall be on full pay. No employer shall suspend a worker unless he has informed the worker of the reason for his suspension in writing. Any suspension without pay as disciplinary sanction following a disciplinary hearing shall not exceed 4 working days.

Rules related to Disciplinary Proceedings

Where the opportunity afforded to a worker to answer any charge made against him is the subject of a disciplinary hearing, he may have the assistance of a representative of a trade union or a legal representative, or both; or an officer of the Ministry responsible for labour and employment affairs, where he is not assisted by a trade union or legal representative.

The worker and the employer may, during disciplinary hearing, negotiate for the payment of compensation to

promote a settlement. Any written statement acknowledging guilt by a worker obtained at the instance of his employer shall not be admissible as evidence before a disciplinary hearing, or any authority or court.

An employer shall, within 7 days of the receipt of a written request, give a copy of the minutes of proceedings of the disciplinary hearing to the worker who has appeared before a disciplinary hearing; and to the person assisting the worker in the disciplinary hearing. The disciplinary hearing initiated against a worker shall be completed within 30 days of the date of the first oral hearing save and except where the parties agree to extend the time period, owing to the illness or death of any of the parties or witnesses, or the reconstitution of the disciplinary panel or change in the legal or other representatives of the parties.

What dispute resolution mechanisms are available to the worker when the worker is dismissed for misconduct or poor work performance?

A worker may approach a competent court where they are of the belief that their employment was terminated without justification or where an employer has failed to follow the correct procedure.



What remedies are available to the worker when the worker is dismissed for misconduct or poor work performance?

A court may order that an employer pay a worker a severance allowance where the termination of their employment on the basis of misconduct or incapacity did not constitute valid grounds. A court will order the payment of a severance allowance equal to the value of 3 months remuneration for every year of completed service, and one twelfth of the amount for every completed year of service multiplied by the number of months for the period of employment which is less than a year.

Can a worker be dismissed for operational requirements?

An employer may terminate the employment of workers on the basis of redundancy subject to the procedure set out in the Workers' Rights Act.

An employer who intends to reduce the number of workers in his employment, either temporarily or permanently, or close down his enterprise, shall notify and negotiate with the trade union, where there is a recognised trade union; or the trade union having a representational status, where there is no recognised trade union; or the workers' representatives, elected by the workers where there is no recognised trade union or a trade union having representational status.

The negotiations shall be with the view to explore the possibility of avoiding the reduction of workforce or closing down by means of:

- restrictions on recruitment;
- retirement of workers who are beyond the retirement age;
- reduction in overtime;
- shorter working hours to cover temporary fluctuations in manpower needs;
- providing training for other work within the same undertaking; or
- redeployment of workers where the undertaking forms part of a holding company.

Where the intended reduction of workforce or closure is the subject of negotiation, the recognised trade union, the trade union having representational status or the workers' representatives may agree with the employer on any of the possibilities set out in the Workers Rights Act to reduce terminations or on any alternative solution or on the payment of compensation by way of a settlement.

Are any termination benefits payable in the event of a dismissal for operational requirements?

A worker is entitled to severance pay.

What dispute resolution mechanism are available to the worker when the worker is dismissed for operational requirements?

The supervising officer of the Ministry for labour and employment affairs may, at the request of any of the parties to the retrenchment negotiations provide a conciliation service to assist parties in the negotiation with the view to reaching an agreement. Where no agreement is reached between the parties or where

there has been no negotiation, an employer who intends to reduce their workforce shall give written notice to the Redundancy Board together with a statement showing cause for the reduction or closure at least 30 days before the intended reduction or closure, as the case may be. An employer shall not reduce the number of workers in his employment either temporarily or permanently before the time expiry of the 30-day period.

Worker remedies?

Workers may refer a dispute to the Redundancy Board. A reduction of workforce or a closing down of an enterprise shall be deemed to be unjustified where the employer acts in breach of the provisions of the Workers Rights Act and the Redundancy Board may order an employer to reinstate workers to their former employment with payment of remuneration for the period from termination to reinstatement.

Where the Redundancy Board finds that the reasons for the reduction of the workforce or the closing down are unjustified, the employer shall, shall pay the worker severance allowance at the rate of 3 months' remuneration per year of service or with the consent of the worker, order the employer to reinstate the worker in his former employment with payment of remuneration from the date of termination of his employment to the date of his reinstatement.

Third party approval for termination/ termination documents?

The reduction of an employer's workforce must be approved by the Redundancy Board.

DATA PRIVACY

What data privacy (if any) obligations rest on employers in respect of their workers?

The Data Protection Act regulates the collection, processing and dissemination of the personal information of workers by their employers. Employers who are data controllers or processors for the purposes of the Data Protection Act shall ensure that personal data of workers is:

- processed lawfully, fairly and in a transparent manner;
- collected for an explicit, specified and legitimate purposes and is processed only for the said purpose;
- adequate, relevant and limited to what is necessary for the purpose for which the information was collected;
- accurate and updated to ensure that the data remains correct at all times;
- kept in a form which permits identification of workers for no longer than is necessary for the purposes for which the information was processed; and
- processed in accordance with the rights of workers.

Employers may not collect, process or disseminate the personal information of workers without the prior consent of a worker and only where the personal information is necessary. Consent is defined in the Data Protection Act as “any freely given specific, informed and unambiguous indication of the wishes of a data subject, either by a statement or a clear affirmative action, by which he signifies his agreement to personal data relating to him being processed”. Employers are therefore encouraged to obtain the written consent of workers in relation to the collection and use of the workers personal information.

BUSINESS TRANSFERS

Are workers automatically transferred to a new employer in the event of transfer of a business as a going concern?

There is no automatic transfer of workers in the event of a transfer of business. The consent of a worker is required prior to the transfer.

Is consultation or information disclosure required prior to transfer, and if so, who must be consulted/ receive information, and what disclosures must be made?

Section 67 of the Workers Rights Act provides that where a worker is made an offer of employment on no less favourable terms and conditions of employment following a transfer of an undertaking, and the worker accepts the offer, the workers employment shall be deemed to be continuous.

In addition, where a worker refuses an offer of employment with the new employer, notwithstanding that their terms and conditions of employment are on no less favourable with the new employer, the worker shall not be entitled to claim that their employment was terminated without justification.

Is it possible to change terms and conditions of employment in the context of a business transfer?

A worker may not be offered less favourable terms and conditions of employment with the new employer.

In addition, in terms of section 67 (3) of the Workers Rights Act, where a worker's terms and conditions of employment are substantially amended as a result of a transfer of an undertaking, a worker may claim that their employment has been terminated by the new employer without justification.

Termination of Employment in the Event of Transfer

Where the employment of a worker of the transferor or transferee is terminated pursuant to or after a transfer of a business, the termination shall, subject to the Workers Rights Act, be without justification unless the reason for termination is economic, technological or structural.



THE REDUCTION OF AN EMPLOYER'S WORKFORCE MUST BE APPROVED BY THE REDUNDANCY BOARD.





THE WORKERS RIGHTS ACT DEFINES THE RETIREMENT AGE AS THE DATE ON WHICH A WORKER ATTAINS THE AGE OF 65 YEARS OF AGE.

RETIREMENT

What is the normal retirement age?

The Workers Rights Act defines the retirement age as the date on which a worker attains the age of 65 years of age. A worker may however elect to voluntarily retire when they attain the age of 60.

What is the Portable Retirement Gratuity Fund?

The Portable Retirement Gratuity Fund was created in terms of Part VIII of the Workers Rights Act for the purpose of providing gratuity payments to workers in the event of their retirement or their legal heirs in the event of their death or to self-employed persons who have contributed to the fund upon their retirement, or their legal heirs in the event of the death of the self-employed person.

Who is eligible to benefit from the Retirement Gratuity Fund?

The following persons shall be entitled to join and to benefit from the Portable Retirement Gratuity Fund:

- (1) Any worker or self-employed, other than:
 - (a) a job contractor;

- (b) a public officer or a local government officer; or
- (c) a worker whose retirement benefits are payable:
 - (i) under the Statutory Bodies Pension Funds Act; or
 - (ii) in accordance with a private pension scheme;
- (d) a migrant worker or a non-citizen; and
- (e) a worker drawing a monthly basic wage or salary of more than MUR200,000.

All employers other than those who have a private pension scheme or those who make contributions to a statutory body specified in the First Schedule to the Statutory Bodies Pension Funds Act, insofar as it relates to its workers, shall on the commencement of the Workers Rights Act, pay to the Director-General the contributions under the Workers Rights Act, in respect of each worker in his employment, at such rate as may be prescribed. The payment of the contributions by employers shall be made to the Director-General of the Ministry

dealing with labour and employment no later than on the twentieth of the month following the month in respect of which the contributions are due.

Where an employer has enlisted the services of a job contractor, the employer and the job contractor shall be jointly and severally liable for the contributions of each worker employed by the job contractor executing the service to the employer to the Portable Retirement Gratuity Fund.

Are any termination benefits payable in the event of retirement?

In addition to the gratuity received from the Portable Retirement Fund, an employer shall pay to a worker who has been in their continuous employment for a period exceeding 12 consecutive months, a gratuity in the event of:

- voluntary retirement at the age of 60 years old;
- retirement before the age of 60 years old in accordance with the provision of a relevant enactment or agreement;
- retirement at the request of the employer before attaining the retirement age of 65 years old;

- retirement before the age of 60 years old in the event of permanent incapacity to perform his work, duly certified by a government official; or
- retirement due to the incapacity to perform his/her normal work as a result of an injury sustained at work, where such incapacity is duly certified by a government medical practitioner.

The retirement gratuity shall be paid to a worker as a lump sum on the worker attaining the age of 60 years old and is calculated as follows:

- other than a part-time worker, 15 days for every year of completed employment and one twelfth of that amount multiplied by the number of months a worker has been in the employment of a single employer for less than one year;
- in the case of a part-time worker, retirement gratuity is calculated on the basis of the number of hours worked by a part-time worker, divided by the number of hours worked by a comparable full-time worker, multiplied by the gratuity payable to full-time workers.

SOCIAL BENEFITS, TAX AND PENSIONS

Workplace injuries

In the event of workplace injury/disease, will workers be entitled to some form of compensation?

The Workmen's Compensation Act, Cap 220 (Workmen's Compensation Act) governs workplace injuries. In terms of section 2(1) of the Workmen's Compensation Act, where a workman suffers personal injury which injury arises out of and in the course and scope of his employment, the employer is liable to pay compensation to the worker in accordance with the First Schedule of the Workmen's Compensation Act, subject to certain exceptions.

Where it can be proved that the injury to the worker resulted out of serious and wilful misconduct of the worker, any compensation claimed, unless the injury results in death or disablement resulting in 20% permanent incapacity or more, shall be disallowed.

Where the workplace injury results in the death of the worker, the compensation shall be paid to their dependants.

Employers are also obliged to pay compensation for occupational disease in terms of section 37 of the Workmen's Compensation Act. This duty is triggered where a surgeon certifies that a worker is suffering from a disease mentioned in the second schedule of the Workmen's Compensation Act and as a result of the disease is unable to perform his previous duties, alternatively where the disease causes the death of the worker. The disease in question must be due to the nature of any employment in which the worker was employed within 12 months before the disablement or death of the worker, whether under one or more employers.

Return to work

Are employers obliged to reintegrate workers into the workplace after having recovered from workplace injuries?

There are no provisions in the Workers Rights Act, the Occupational Safety and Health Act or the Workmen's Compensation Act which speak to reintegration of a worker after a workplace injury.

Medical aid benefits

Are employers obliged to provide workers with membership to medical aids or other assistance with medical costs?

Section 57(2)(a) of the Workmen's Compensation Act provides that in situations where a worker suffers an injury or illness at work and requires transport back to his/her place of residence, to a hospital or to another medical institution, the employer is required, as soon as reasonably possible and at the employer's expense, to provide the worker with an appropriate means of transport.

Taxation

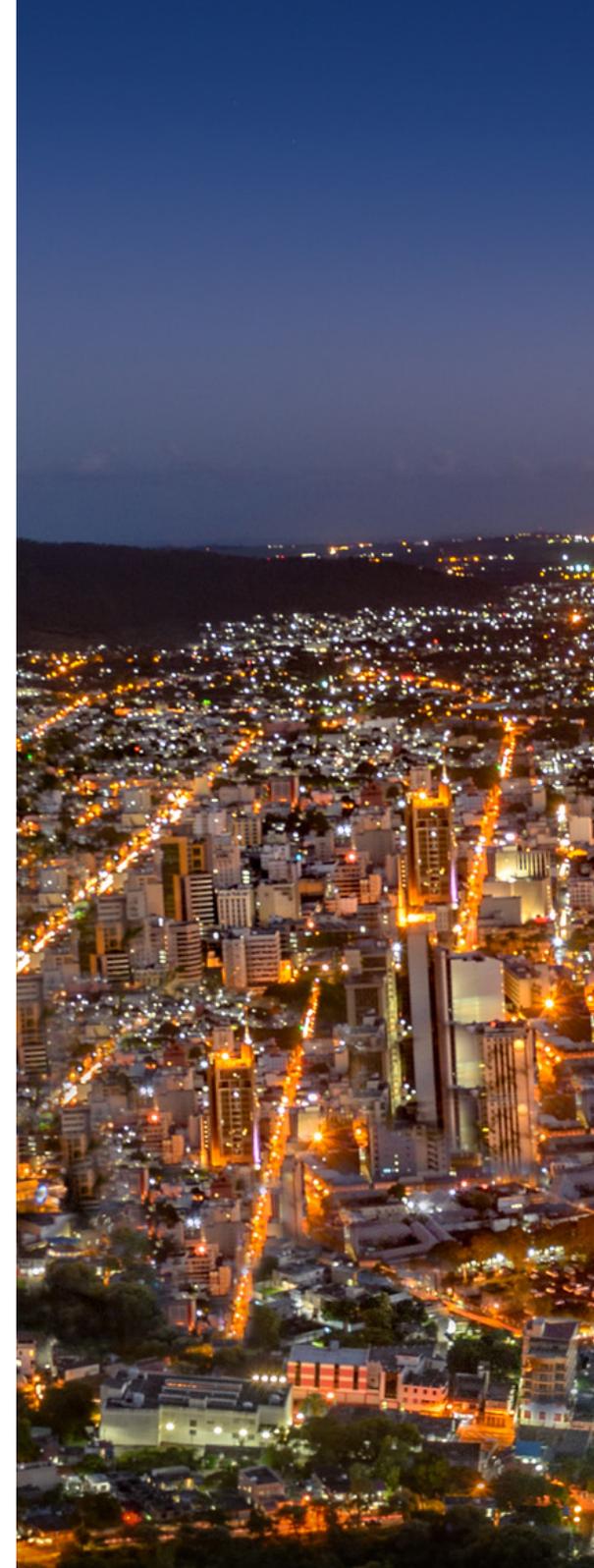
What are the employer's obligations in respect of worker income tax?

The Income Tax Act, 1995 (Income Tax Act) provides for instances where there has been an overpayment of a benefit. In terms of section 43 of the Income Tax Act, where a person receives a benefit to which he/she was not entitled or qualified to receive, the Director-General is authorised to recover the benefit.

Other social benefits

What are other social benefits contributions must be made?

In terms of section 110 of the Workers Rights Act, where a worker who has been in continuous employment with the same employer for a period of not less than 12 months dies, the employer is required to pay a death gratuity to the legal heirs of the worker. The gratuity must be calculated in terms of section 109(3) of the Act.





WHERE THE WORKPLACE INJURY RESULTS IN THE DEATH OF THE WORKER, THE COMPENSATION SHALL BE PAID TO THE DEPENDANTS OF THE WORKER.

REMUNERATION ENTITLEMENTS

What are the provisions related to equal pay?

Employers are required to ensure that the remuneration of one worker is not less favourable than the remuneration of another worker performing work of equal value.

In circumstances where a worker replaces another worker who receives a higher remuneration and performs the same level of work as the former worker, the replacement worker shall be paid the remuneration corresponding to the initial salary in the salary scale, if any, of the other worker, alternatively, the salary drawn by the former worker, whichever is applicable.

In instances where an employer makes use of the services of a job contractor, the job contractor is required to ensure that the remuneration of the workers employed by them is not less favourable than the remuneration paid to the workers employed by the principal employer who perform work of equal value.

What are the requirements in relation to the payment of remuneration to full-time workers?

The payment of remuneration to full-time workers is governed by section 27 of the Workers Rights Act which stipulates that employers are obliged to pay workers in monthly intervals, unless the parties agree to shorter intervals. Remuneration must be paid to workers directly in legal tender only, unless there exists a written agreement between the parties for the

payment to be made by way of cheque or into the worker's bank account. Employers are required to issue workers with a payslip at the time of payment in the form set out in schedule 2 of the Workers Rights Act which shows the contribution made by the employer to the Portable Retirement Gratuity Fund. When payment is effected by way of legal tender or cheque, employers are required to cause every worker to sign or affix his/her thumbprint in a remuneration book which sets out the particulars of the remuneration paid.

Where a worker claims for the non-payment or short payment of wages before a court of law, the court may order an employer to pay interest at a rate not exceeding 12% in a year on the amount of remuneration due from the date of non-payment/short payment to the date of payment.

What are the requirements in relation to the payment of remuneration to part-time workers?

Section 28 of the Workers Rights Act governs the payment of remuneration to part-time workers.

In this regard, employers are required to pay part-time workers not less than the basic wage or salary which is prescribed in any enactment or specified in a collective agreement, except in circumstances where the enactment overrides the agreement for the category or grade in which the worker is employed, whichever is higher. This amount is required to be calculated proportionately on the notional hourly rate and increased by not less than 5%. Where no enactment or collective agreement exists, which prescribes a basic salary or wage, an employer is required to pay part-time workers an amount which is not less than the basic wage or salary of a comparable full-time worker. Again, this amount must be calculated proportionately on the notional hourly rate and increased by not less than 5%.

Are employer liable for the payment of remuneration to workers employed by job contractors?

In terms of section 29 of the Workers Rights Act, job contractors and the principal employer are jointly and severally liable for both the payment of the remuneration of workers employed by a job contractor as well as the conditions of employment of those workers, which includes their safety, health and welfare.

The liability of the principal employer is qualified in terms of section 29(2) of the Workers Rights Act. In this regard, the principal employer's liability is limited to the

sum payable by him to the job contractor in terms of the arrangement between them.

Where a principal employer is jointly liable to a job contractor for a worker's remuneration, section 29(3) of the Workers Rights Act bars all individuals from using as a defence, the fact that he/she had already paid to the job contractor any sum due under the arrangement with the job contractor.

What are the remedies available to workers in the event of non-payment of remuneration?

Where an employer has failed to pay any remuneration due to a worker or a group of workers and the supervising officer, after an enquiry, is satisfied that this is the case, the supervising officer may apply to a Judge in his/her chambers for a protective order on behalf of the worker or the group of workers. The protective order shall be for sum of the remuneration due and shall be against both the employer and any bank or financial institution which holds funds on behalf of the employer.

What are the restrictions on the deductions from remuneration?

An employer is not entitled to deduct any amount from a worker's remuneration, other than an amount which has been authorised by the worker in writing in two specific circumstances. The first being where the amount is due to the employer in recovery of an advance that was made on basic wages. This deduction cannot exceed one fifth of the basic wages due for a pay period. The second is where the worker wishes that the amount be deducted in order to effect any payment or contribution to any fund, body or other institution. Employers are restricted

from deducting any amount from a worker's remuneration which exceeds one half of the worker's remuneration for any pay period. Employers are also restricted from deducting any amount from a worker's remuneration which constitutes a fine or compensation for poor or negligent work, or for damage caused to the employer's property, as a direct or indirect payment for the purpose of obtaining or retaining employment or by way of discount, interest or any charge on account of an advance of remuneration made to a worker.

WAGE GUARANTEE BOARD

What is the Wage Guarantee Fund and what is its function?

The Wage Guarantee Fund is a fund that is held by the Workfare Programme Fund. The purpose of the Workfare Programme Fund is to compensate workers in circumstances where the enterprise of their employer has been declared insolvent by the Supreme Court.

Who is entitled to claim from the Wage Guarantee Fund?

Any worker who has not been paid remuneration in situations where his/her employer is insolvent, provided the worker has registered a complaint with the supervising officer of the Ministry responsible for labour and employment affairs.

What are the rules related to the overpayment of benefits?

Where a person has received a benefit to which he/she is not entitled or not qualified to receive, alternatively, was disqualified from receiving, the amount shall be recovered by the Director-General in the same manner as income tax is recoverable under Part XI of the Income Tax Act.



POST-TERMINATION RESTRAINTS

Enforceability of non-compete provisions

Can contractual non-compete provisions be enforced? Is it common for such “restraints” to form part of employment contracts?

The Workers Rights Act makes no provision for or places no prohibition on the enforcement of agreements in restraint of trade. However, keeping in view of the proximity of businesses operating in the limited geographical area of Mauritius, there may be a circumstance where the employer may restrain a worker from being involved in

the same line of operation so as to protect their proprietary interests. Whether such a clause is enforceable, depends on its reasonableness and validity. The provisions of the common law will apply in this regard.

An employer seeking to restrain a worker throughout the geographical area of Mauritius would be required to show that their business operations expand the entire geographical area of Mauritius. The Supreme Court of Mauritius has held in the past that a restraint period of 6 months is reasonable. Restraints of trade agreements which also include a non-solicitation clause and a prohibition on the solicitation of suppliers will be upheld subject to the reasonability of the clause. Payment of compensation

in light of a restraint of trade agreement is mandatory and an employer would need to show that where compensation is paid, it is commensurate to justify a restraint period of longer than 6 months.

CONFIDENTIALITY AND TRADE SECRETS

What protections are offered to employers in respect of their confidential information/trade secrets?

Workers are bound by the common law duty of good faith which includes a duty to ensure that the confidential information of their employers remains a secret.



SECTION 28 OF THE WORKERS RIGHTS ACT GOVERNS THE PAYMENT OF REMUNERATION TO PART-TIME WORKERS.



MOZAMBIQUE

Official language(s): Portuguese

Population (approx.): **30m**

Unemployment rate (2018): **25%**

Name of court for labour matters: Labour Court

Are pre-employment checks permissible? Yes, but information limited to that which is fundamental and specific to job

Dismissal for misconduct: is there a requirement for procedural and substantive fairness? Yes

Immigration: must foreign employees obtain a work visa? Yes, foreigners are required to apply through the special quota system or obtain work authorisation from Minister of Labour





BACKGROUND

Applicable legislation

- Constitution of Mozambique, 2004, as amended
- New Labour Law Act, No 23 of 2007 (Labour Law)
- General Hiring of Expats Regulation, Decree 55/2008
- The Regulation on the Hiring of Expats in the Petroleum and Mining Sector, Decree 63/2011

The Immigration Law Regulation, Decree 108/2014

- Employment Law (relations of foreign non-resident employees), Decree 37/2016 and Decree 63/2011
- Occupational Accidents and Illnesses, Decree 62/2013
- Law on Social Protection Act, No 4 of 2007

Regulatory rating

✓ *Heavily regulated.*

HIRING DECISIONS

Pre-hire checks

May employers conduct pre-hire checks?

Yes, employers may conduct pre-hire checks, however these checks are limited to information that is fundamental and relevant to the specific job that will be performed by the employee.

For example, if the candidate will be employed to deal with money it would be justifiable to request information about prior convictions to confirm whether or not the applicant was convicted of corruption, theft, extortion or fraud crimes. Employers may require the employee to undergo a medical examination for purposes of determining fitness for work. Employees may not be tested for HIV/AIDS unless they consent to such testing.

What hiring options are available to employers?

There are mainly two hiring options available to employers in Mozambique:

- Permanent contract; or
- Fixed-term contract with a sponsor or without a sponsor.

There are other options of hiring available to employees namely, employing freelance workers or hiring on a retainer basis.

Labour brokers are also frequently used in Mozambique however, not all labour brokers are authorised and may render the client and the broker jointly and severally liable to employees, in respect of rights arising from their employment contracts.

Minors under the age of 15 years old are not allowed to be hired. The Labour Law does however provide that any employer may enter into an employment relationship

with a 15-year-old employee, provided that authorisation is obtained from the parent and guardian of the employee.

Immigration

Do foreign employees require permits to work and which visas may be obtained to allow foreigners to work?

There are limitations and stringent rules on employing foreign labour. There are primarily two ways in which foreigners may be hired for long term work namely:

- through a special quota system granted under the investment project approved by the government; and
- under a work authorisation granted under the discretionary power of the Minister of Labour.

The limitations on employing foreign labour include notifying the Minister of Labour, Employment and Social Security of such employment.

Further, the employment of foreign employees and the notification is subject to a quota system for example: where the company has more than 100 employees, 5% of the total number of employees; where the company has between 10 and 100 employees, 8% of the total number of employees; and where the company has up to 10 employees, 10% of the total number of employees.

Should the employer wish to employ candidates beyond the quota system authorisation from the ministry is required. Further the employer must provide evidence that the prospective expatriate employees possess the required academic and professional qualifications, and that there are no (or not enough) Mozambicans with those qualifications.

Are there any limitations placed on employers' discretion to determine new hires?

There are limitations placed on the employer including the quota system, as mentioned herein, and the minimum working age which is 15 years provided that authorisation is received from a parent or guardian. There appears to be no positive obligation on the employer to hire any designated group or individual provided that the principles of equality and anti-discrimination are observed.

CONDITIONS OF EMPLOYMENT

Are there any formality requirements attached to employment contracts, eg written format and/or signed?

Article 38 of the Labour Law provides that employment agreements should be in writing and contain the following information:

- identification of the parties;
- professional classification and professional occupational category of the employee;
- place of work;
- duration of the agreement and terms for its renewal;
- amount, means and period of wages' payment and details of additional payments;
- hiring date;
- established agreement term and its justification (in case of a temporary employment agreements);
- date of the agreement and, in case of a fixed-term agreement, termination date; and
- signatures.

Probation

Can a probation period be used, and if so, is there a maximum prescribed period of probation?

Probation periods can be used per art46 of the Labour Law. The type of probation would depend on the type of employment contract. For example, art47 provides that probation periods could be 180 days for intermediate and higher-level technicians and employees who hold leadership and management positions. Contract employees may be subject to probationary periods that do not exceed 90 days unless the parties agree to exclude or reduce it.

Minimum employment rights?

Are any employees excluded from minimum employment rights?

Generally, all employees including foreign nationals are guaranteed equal rights at work. Minimum employment rights are governed by the Labour Law. The Act however, does exclude from its scope of application public servants and local government employees.

Is there a minimum wage requirement?

Yes, there is a minimum wage requirement. The national wage is set according to the various economic sectors within which the employee is employed.

What are the standard/maximum working hours? Are there prescribed minimum resting periods during the normal working day/week?

Article 85 provides that the maximum working hours are 48 hours per week and eight hours per day. These can be adjusted depending on the circumstances.

Employees are entitled to a break of between 30 minutes and up to a maximum of two hours per working day.

What are the minimum requirements relating to overtime?

An employee may perform up to 96 hours of overtime per quarter, according to art90(3) but an employee is not permitted to work more than eight hours of overtime per week nor exceed 200 hours per year.

What are the minimum requirements relating to annual leave?

Articles 98 and 99 of the Labour Law provide that employees are entitled to paid holidays as follows:

- one day of holiday for each month of effective service during the first year of employment;
- two days of holiday for each full month of effective service during the second year; and
- 30 days of holiday for each full year of effective service from the third year onwards.

What are the minimum requirements relating to sick leave?

Employers must grant sick leave for an uninterrupted period of up to 15 days, or five non-continuous days in one quarter, after which an employer can refer the employee to a health board in order to determine the employee's capacity to work.

In addition, social security regulations establish that employees are entitled to up to 365 continuous days of sick pay under the social security system in case of a non-occupational illness or an accident.



EMPLOYEES ARE ENTITLED TO A BREAK OF BETWEEN 30 MINUTES AND UP TO A MAXIMUM OF TWO HOURS PER WORKING DAY.



Therefore, any employee who falls ill or suffers an accident unrelated to work can receive sick pay under the social security system and the employer need not pay their salary during this absence.

What are the minimum requirements relating to parental leave, and does it apply to both parents or only mothers?

Article 12(1) provides that female employees are entitled to 60 consecutive days' maternity leave, which may initiate 20 days before the predictable delivery date. Female employees are entitled to a maternity allowance paid by Social Security.

Women on maternity leave, and until one year after giving birth are entitled to protection against termination, unless a serious disciplinary offence which determines the immediate impossibility of maintaining the employment relationship.

Article 12(5) provides that male employees are entitled to a one-day paternity leave, every two years, which shall be enjoyed on the day immediately following the childbirth. Paternity leave is fully paid.

What are the minimum requirements relating to family responsibility leave (if any)?

There are family responsibility leave provisions although these are incorporated into other labour law provisions. For example, art11(6) of the Labour Law provides that women are entitled to 30 days per year in case of illness or accident of children. However, the employer need not pay the employee's salary during this absence. Employees are entitled to sick pay during family leave absences under the social security system.

Further, art103 defines other examples of when family responsibility leave can be taken for example, five days for marriage, five days for the death of the employee's spouse, father, mother, children, step children, siblings, grandparents, stepfather or stepmother.

Are employees automatically entitled to bonus payments?

No, employees are not automatically entitled to bonus pay, this is entirely up to the company and the economic situation of the company.

Changing terms and conditions of employment

Are employees automatically entitled to periodic increases, alternatively how do the parties normally achieve consensus on increases?

Periodic salary increases are governed by individual company policy and often based on company performance.

Can employment terms be changed without achieving agreement with the employees?

Yes, art70(2) provides that employment terms can be changed provided that there is a legally established case on the part of the employer to do so and the employer consults in advance with the relevant trade union body and notifies the relevant labour administration office.

Are employees commonly represented in their interactions with employers relating to changes to employment terms?

Yes, employees are commonly represented in their interactions with employers, they are either by trade unions or work councils.



**PERIODIC
SALARY
INCREASES
ARE GOVERNED
BY INDIVIDUAL
COMPANY POLICY
AND OFTEN BASED
ON COMPANY
PERFORMANCE.**

SOCIAL BENEFITS, TAX AND PENSIONS

Workplace injuries

In the event of workplace injury/disease, will employees be entitled to some form of compensation?

Yes, employees have a right to receive compensation for accidents at work or occupational illness. In the case of the occurrence of an occupational illness or workplace accident the employer is held responsible only if it does not have collective insurance for the employees.

Return to work

Are employers obliged to reintegrate workers into the workplace after having recovered from workplace injuries?

Employers are obliged to integrate employees after having recovered from a workplace injury. In fact, employers may not unilaterally terminate an employment contract while an employee is on sick leave. An employer may approach the Health Board which will decide on whether an employee is incapacitated to a point of being unable to work.

Medical aid benefits

Are employers obliged to provide employees with membership to medical aids or other assistance with medical costs outside of the context of workplace related injury or disease?

Yes, employees have the right to benefit from medical and medicinal aid.

Taxation

What are an employer's obligations in respect of employee income tax, and what are the maximum personal tax rates that are applicable?

Salaries in Mozambique are subject to two legal deductions:

- income-related personal income tax (IRPS); and
- social security contributions.

Employers must deduct IRPS from salaries and other work-related remuneration. The withholding amounts are calculated on the basis of the IRPS progressive rates set out in withholding rate tables issued by the government.

Other social benefits

What other employee social benefits must the employer either contribute to or deduct from employee contributions?

Employers may also deduct social security contributions from employees' salaries which amount to 3% contribution by the employee and 4% payable by the employer.

The mandatory social security contribution corresponds to 7% of the employee's net salary, with 4% due and payable by the employer and 3% by the employee. The portion due by the employee is deducted from their salary by the employer and then the full 7% is sent to the social security authorities.



EMPLOYERS HAVE AN OBLIGATION TO RESPECT THE PERSONAL RIGHTS OF EMPLOYEES.

DATA PRIVACY

What data privacy obligations (if any) rest on employers in respect of their employees?

Employers have an obligation to respect the personal rights of employees according to art5 of the Labour Law. The employers' power to collect and process personal data is restricted by the employee's fundamental right to privacy. Employers may not, in terms of arts5 and 6 of the Labour Law, when appointing an employee or during the course of an employment contract, require the employee to provide information about their private life except where the occupational activity the employee is involved in requires this information. In this instance, reasons for requiring this information must be stated in writing beforehand.

Personal data of an employee which is obtained by the employer is subject to a duty of confidentiality. Further, any other information, which if disseminated breach the employee's privacy, shall not be supplied to third parties without consent of employee unless legally required.

In relation to the monitoring of an employee's communications, this is not expressly provided for but is possible, with some limitations namely: the employee is made aware of the communications being monitored, the monitoring must be reasonable and necessary for the purposes sought by the employer and the employee's right to privacy being protected.

BUSINESS TRANSFERS

Are employees automatically transferred to a new employer in the event of transfer of a business as a going concern?

Yes, there shall be automatic transfer to the new employer and the employees maintain their previous rights and working conditions. However, transfer will not occur if the employees have reached retirement age, lack confidence in the new employee, intend on staying on as employees of the old employer or the buyer seeks to change the business' functions.

Further, an employee cannot be dismissed as a result of the business transfer but in connection with it. This means that employees can only be dismissed following a business transfer, for either operational reasons (structural, economic or technological grounds) or termination of the employment contract with prior notice.

Is consultation or information disclosure required prior to transfer, and if so who must be consulted/receive information, and what disclosures must be made?

Yes, consultative and information disclosure is required prior to transfer. There is a procedure that must be followed, in the event of a business sale. Both seller and buyer shall inform and consult with the trade union representatives within the company or works council (in case there no trade union bodies) of the date and reasons for the business sale, as well as its predictable consequences.

Joint and several liability for employers?

According to Article 76(4) of the Labour Law Act, the new owner will be jointly and severally liable "for those obligations of the former owner which accrued during the productive unit's last year of activity preceding the transfer, even if such obligations relate to employees whose contracts had already terminated in terms of the law at the time of the transfer".

Is it possible to change terms and conditions of employment in the context of a business transfer?

In general, Article 76(3) provides that the new employer is required to provide the same terms and conditions of employment to the relevant employees as established in the respective employment agreements with the previous employer/owner. However, employers may amend existing employment agreements by mutual agreement, provided that such agreement does not breach article 22 of the Labour Law.

What are the consequences in the event of non-compliance?

Should an employer not comply with the applicable rules, the employer may be subject to fines by the authorised labour officials. In addition, the employee may then terminate the contract with just cause and be entitled to severance pay, if the employee successful proves that they suffered serious prejudice arising from the change of business ownership.



TERMINATION OF EMPLOYMENT

What are the statutory obligations and procedures for terminating a contract of employment?

An employment contract may be terminated for the following reasons:

- expiry of contract;
- mutual agreement;
- termination of the employee, with or without cause; or
- termination with cause by the employer.

Therefore, there is no at will termination by serving an employee with a notice period. With fixed contracts an employer is obliged to serve a written notice before the contract expires. In instances of redundancies, the employer is also obligated to issue the affected employees with written notices of termination.

Termination for misconduct

An employee may be dismissed for misconduct as outlined in art66 of the Labour Law which describes the kinds of misconduct an employee may have committed to warrant dismissal. Under the Employment Law, the employer shall be entitled to dismiss the employee with just cause in the following cases:

- culpable conduct on the part of the employee, sufficiently serious to justify dismissal (disciplinary dismissals); or
- arrest or imprisonment of the employee if, by the nature of their tasks, the arrest or imprisonment operates hinder the functioning of the employer.

Culpable conduct on the part of the employee, sufficiently serious to justify dismissal may be that of arrest or imprisonment of the employee if, by the nature of their tasks, the arrest or imprisonment operates hinder the functioning of the employer.

The dismissal of any employee must be procedurally and substantively fair. Before dismissal is affected, the employee shall be invited to a disciplinary hearing before a final decision to dismiss is made. The period of prescription for the hearing is six months from the date on which the offence occurred. This enables fair proceedings prior to dismissal. The disciplinary hearing is made up of a number of stages for example accusation phase, the defence phase and the decision stage. Each of these phases aim to establish fair procedure.

Further, employees' rights to substantive fairness is legitimated during the defence stage proposed in art67(2). During this stage the employee may present their written defence, attaching any document or requesting any evidence (for instance, witness testimonial) that may be considered relevant. The basis on which an employer may fairly dismiss are on the basis of establishing fault in the conduct of the employee, which due to its seriousness precludes the possibility of maintaining the employment relationship.

What are the applicable notice periods?

Generally, the notice period is 30 days, although the contract or collective bargaining agreement may establish a longer period.



EMPLOYEES ARE FREE TO CHALLENGE EITHER THE PROCEDURE OR THE GROUND OF THEIR DISMISSAL.

Is third party approval for termination/ termination documents required?

Third party consent is not required for dismissals, although in some cases trade unions or works councils may have to be consulted.

Termination for incapacity

Ill-health does not constitute a valid reason for terminating the contract of employment. The ill-health of an employee may cause the employment contract to expire. However, this is only after a declaration has been made by the Health Board.

In addition, s66 provides that an employee can be dismissed for manifest inaptitude of the employee that is only discovered after the probation period has ended.

What notice periods are applicable?

Generally, the notice period is 30 days, although the contract or collective bargaining agreement may establish a longer period.

Is third party approval for termination/ termination documents required?

Third party consent is not required for dismissals, although in some cases trade unions or works councils may have to be consulted.

Termination for operational requirements

The Mozambican Employment Law provides for two main types of redundancy procedure: individual redundancy (arts127(4)(d) and 130) and collective dismissal (art132).

The first kind of redundancy occurs whenever the employer faces economic, technological or structural circumstances that give rise to a reorganisation or conversion of the company, or a reduction or closure of activities, which makes it necessary to eliminate or significantly alter some jobs.

The second type of redundancy is the dismissal of more than 10 employees based on structural, technological or market reasons is deemed a collective dismissal. The intention to proceed with a collective redundancy must be disclosed, in writing, to the employees, trade union representatives or works council and the Ministry of Employment before the negotiation process.

Describe what fair process requirements may exist?

Article 133 provides the fair process procedure for collective dismissal. Within the collective redundancy, the negotiation and consultation procedure between the employer and the employees' representatives cannot last over 30 days

and should essentially cover the following matters:

- grounds for the dismissal;
- possibilities of avoiding or, at least, diminishing its effects; and
- measures to be taken in order to mitigate its impending consequences. The burden of proof of structural, technological or market reasons for the dismissal lies with the employer.

Both cases of redundancy give every dismissed employee the right to a 30 days' prior notice plus a compensation calculated as described above.

What are the dispute resolution mechanisms?

Dispute resolution in employment matters is governed by several different statutes: Collective conflict resolution regime, set forth in the Employment Law, with the necessary adaptation, applies to disputes arising from individual employment relationships. Therefore, although conciliation is optional, mediation is mandatory, before submitting the claim to arbitration or to the labour courts, except for interlocutory injunctions.

The arbitration procedure is governed in the Employment Law. Arbitration is always optional, unless the employer is a state company, or a company that provides for basic needs services and the Commission for Mediation and Arbitration so determines.

If and when the claim is filed with the court, the employee and the employer are given notice to attend to a mandatory conciliation hearing with the purpose of reaching an agreement. The judicial phase begins only if no agreement is reached. The only fees to be paid by the employee in order for a claim to be submitted are the court fees. Nevertheless, in certain situations, the employee may be exempted from this payment, upon submission of a duly substantiated request.

The Labour Procedure Code also establishes special procedures regarding occupational accidents and illnesses.

What remedies are available to employees?

Employees are free to challenge either the procedure or the ground of their dismissal. In case of an unlawful dismissal, the employee may request:

- salaries regarding the period during which the proceeding was pending (with a limit of six months); and/or
- reinstatement or alternatively a compensation corresponding 45 days' wage per each year of seniority (for employees under permanent contract, while fixed-term contract employees is calculated from the date of termination and the date on which their contract would have expired).

Such actions must be filed within six months of the employer's decision to terminate the employment.

Is third party approval for termination/ termination documents required?

Third party consent is not required for dismissals, although in some cases trade unions or works councils may have to be consulted.

Notice requirements

When an employer foresees a collective dismissal, it shall notify the trade union bodies and the affected employees and shall inform the ministry that oversees the area of labour before the negotiation process begins.

The notice to the employees shall be accompanied by: a description of the reasons invoked for the collective dismissal and the number of employees who will be affected by the process.



THERE IS NO PROVISION IN LAW THAT CATERS FOR BENEFITS PAYABLE IN THE EVENT OF A DISMISSAL FOR INCAPACITY.

Termination benefits

Are any termination benefits payable in the event of a dismissal for operational requirements?

Yes, dismissal based on operational requirements does afford the employee compensation. The compensation values depend on whether the employee was on a permanent or a fixed-term contract.

For fixed-term contract employees, compensation payable to an employee corresponds to the salaries between the dismissal and the date on which the contract was due to terminate.

For permanent employees, compensation values are calculated as follows:

- 30 days of wages per each year of service, if the employee's base wage is equivalent to one to seven times the national minimum wage;
- 15 days of wages per each year of service, if the employee's base wage is equivalent to eight to 10 times the national minimum wage;
- 10 days of wages per each year of service, if the employee's base wage is equivalent to 11 to 16 times the national minimum wage; or
- three days of wages per each year of service, if the employee's base wage is equivalent to more than 16 times the national minimum wage.

Are any termination benefits payable in the event of a dismissal for misconduct?

There is no provision in law that caters for benefits payable in the event of a dismissal for misconduct outside what would be ordinarily due to the employee (ie their accrued benefits). The law is very clear that an employee dismissed for misconduct or imprisonment is not entitled to compensation.

Are any termination benefits payable in the event of a dismissal for incapacity?

There is no provision in law that caters for benefits payable in the event of a dismissal for incapacity. The Act also mentions explicitly that an employee dismissed for manifest inaptitude is not entitled to compensation.

Are any termination benefits payable in the event of voluntary resignation by an employee?

There is no provision in law on the benefits payable in the event of voluntary resignation by an employee, however compensation can be negotiated and agreed between the parties.



Are any termination benefits payable in the event of retirement?

Termination benefits in the event of retirement will also depend on whether the contract of employment was permanent or a fixed-term contract. Accordingly, compensation for permanent employees will be based on the following;

- 30 days of wages per each year of service, if the employee's base wage is equivalent to one to seven times the national minimum wage;
- 15 days of wages per each year of service, if the employee's base wage is equivalent to eight to 10 times the national minimum wage;
- 10 days of wages per each year of service, if the employee's base wage is equivalent to 11 to 16 times the national minimum wage; or
- three days of wages per each year of service if the employee's base wage is equivalent to more than 16 times the national minimum wage.

For fixed-term contract employees, the severance pay due to an employee corresponds to the salaries the employee would receive between the termination and the date on which the contract would have expired.

RETIREMENT

What is the normal retirement age?

The retirement age is 60 years for men and 55 for women. Retirement does not occur automatically when the employee reaches the above ages. Employees have to fulfil the

conditions set out in the regulations on social security in terms of the period of enrolment with the social security and the number of contributions made.

In respect of whether termination of employment at retirement constitutes dismissal, termination of employment at the point of retirement does not constitute dismissal, as retirement does not form grounds for dismissal.

POST-TERMINATION RESTRAINTS

Enforceability of non-compete provisions

Can contractual non-compete provisions be enforced?

There are no rules on non-compete agreements in Mozambique and their enforceability is not fully settled as on one hand, non-compete agreements are not expressly prohibited but seen as being contrary to the Mozambique Constitution protection of the right to work and choose one's job freely. Restrictive covenants may therefore be unenforceable, but this is not settled.

Confidentiality and trade secrets

What protections are offered to employers in respect of their confidential information/trade secrets?

Employers may rely on common remedies such as approaching the courts or a forum of conciliation/arbitration were an employee has breached confidentiality or trade secret agreements. However, covenants must be reasonable or risk being unenforceable.



NAMIBIA

Official language(s):

German, English

Population (approx.):

2.5m

Unemployment rate (2018):

34%

Name of court for labour matters:

Labour Court

Are pre-employment checks permissible?

Yes

Dismissal for misconduct: is there a requirement for procedural and substantive fairness?

Yes

Immigration: must foreign employees obtain a work visa?

Yes, foreigners are required to apply for an employment work permit





BACKGROUND

Applicable legislation

- The Labour Act, No 11 of 2007
- Employees' Compensation Act, No 30 of 1941
- Constitution of the Republic of Namibia, 1990

Regulatory rating

✓ *Heavily regulated.*

HIRING DECISIONS

Pre-hire checks

May employers conduct pre-hire checks?

Employers may test an employee's fitness to work. However, an employer may not conduct pre-hire checks for HIV testing.

Hiring options

What hiring options are available to employers?

A number of hiring options are available to employers including:

- independent contractors;
- permanent employment;
- fixed-term contracts;
- casual employment; and
- part-time employment.

Immigration

Do foreign employees require permits to work and which visas may be obtained to allow foreigners to work?

Foreign employees require a Namibian employment work permit. The permit is normally issued for a period of between one to three years and can thereafter be renewed.

Are there any limitations placed on an employers' discretion to determine new hires?

Employers cannot employ children under the age of 14 years old. Discrimination is also prohibited. It is however not considered discriminatory to take any affirmative action measures into account and to ensure equal opportunities for disadvantaged persons, women and persons with disabilities. It is also not considered discrimination if the employer takes into account the ability, capacity, productivity, the conduct of a person, inherent requirements of the job and the needs of the particular industry upon employment.



CONDITIONS OF EMPLOYMENT

Are there any formality requirements attached to employment contracts, eg written format and/or signed?

Employment contracts are not required to be in writing. The definition of employee in s1 merely provides that an employee is a natural person who is employed and receives or is entitled to remuneration or assists in the carrying on of the business.

However, s4 of the Labour Act provides that employers are required to keep certain employment records for a period of five years. These records include:

- the date on which each employee commenced employment;
- the date on which any contract of employment was terminated and the reasons for the termination;
- the remuneration payable to each employee;



EMPLOYMENT CONTRACTS ARE NOT REQUIRED TO BE IN WRITING.

- the name, sex, age and occupation of each employee;
- any period of absence, including annual leave, sick leave, compassionate
- leave or maternity leave, taken by an employee; and
- any other information that is prescribed or required by the Permanent Secretary in writing.

Can a probation period be used, and if so, is there a maximum prescribed period of probation?

It is unclear whether probationary periods are permitted in Namibia.

Minimum employment rights?

Are any employees excluded from minimum employment rights?

Section 2(2) prescribes that employees employed by the Namibian Defence force, the Namibian Police force and municipal police service, the Namibian Central Intelligence service and members of the Prison Service are excluded from the minimum employment rights

Is there a minimum wage requirement?

In terms of s13 of the Labour Act the Minister responsible for labour may issue wage orders. No national minimum wage order has been set.

Wage orders setting minimum wages for certain job categories are in existence:

Domestic Workers:

- N\$1,353.20 per month
- N\$312.30 per week
- N\$62.45 per day
- N\$7.80 per hour

Farmworkers (basic levels set through collective bargaining):

- N\$888 per month
- Fringe benefits include housing, free transport for children to schools, free transport for workers and their dependents to clinics and hospitals, as well as free keeping of cattle and other animals such as horses and donkeys.

Construction (basic levels of pay set through collective bargaining):

- Made applicable to the industry in terms of notice in Government Gazette No 5917 of 31 December 2015, applicable for 2016 and 2017.
- N\$16.04 per hour (+-N\$2,400.00 per month).

Security (basic levels of pay set through collective bargaining):

- N\$8.75 per hour (+-N\$1,300 per month (150 hours)).

What are the standard/maximum working hours? Are there prescribed minimum resting periods during the normal working day/week?

An employee may not work more than 45 hours in a week. The employee may not work more than nine hours in a day if the employee works for five days or less in a week or eight hours a day if the employee works for more than five days in a week. Rest periods are prescribed. If an employee works continuously for more than five

hours in a day the employee is entitled to a meal interval of one hour. The meal interval can be shortened to a minimum of 30 minutes by agreement.

What are the minimum requirements relating to overtime?

Overtime can only be worked by agreement and may not exceed 10 hours in a week or three hours a day. An employer must pay the employee for each hour of overtime worked at a rate at least 1.5 times the employee's basic hourly wage, and on Sundays or public holidays at a rate of at least double the employee's hourly basic wage.

Section 21 states that an employer may not require or permit an employee to perform work on a Sunday, but provides for various exceptions to this prohibition in the cases of:

- urgent work (which includes, per definition, emergency work which, if not attended to immediately, could cause harm to or endanger the life, personal safety or health of any person or could cause serious damage or destruction to property);
- carrying on the business of a shop, hotel, boarding house or hostel that lawfully operates on a Sunday
- performing domestic services in a household;
- health and social welfare care and residential facilities;
- work on a farm required to be done on a Sunday; or
- work in which continuous shifts are worked, and an employee working on a Sunday must be paid double that employee's hourly basic wage for each hour worked.

Section 22 states that an employer may not require or permit an employee to perform work on a public holiday, but provides for various exceptions to this prohibition in the cases of:

- urgent work;
- carrying on the business of a shop, hotel, boarding house or hostel that lawfully operates on a Sunday;
- performing domestic services in a household;
- health and social welfare care and residential facilities;
- work on a farm required to be done on a Sunday; or
- work in which continuous shifts are worked, and the section also requires an employer to pay an employee who does not work on the public holiday no less than the employee's normal daily remuneration, and to pay an employee who does work on the public holiday, such employee's normal daily remuneration plus that employee's hourly basic wage for each hour worked.

What are the minimum requirements relating to annual leave?

Section 23 regulates annual leave as follows:

- if the number of days in an ordinary work week are six, the annual leave is 24 working days;
- if the number of days in an ordinary work week are five, the annual leave is 20 working days;
- if the number of days in an ordinary work week are four, the annual leave is 16 working days;
- if the number of days in an ordinary work week are three, the annual leave is 12 working days;



A SICK LEAVE CYCLE IS A PERIOD OF 36 CONSECUTIVE MONTHS.

- if the number of days in an ordinary work week are two, the annual leave is eight working days;
- if the number of days in an ordinary work week is one, the annual leave is four working days;

What are the minimum requirements relating to sick leave?

The amount of paid sick leave that an employee is entitled to depends on the number of days the employee ordinarily works in a week. If the employee ordinarily works five days during the week, the employee will be entitled to not less than 30 days in the sick leave cycle. If the employee ordinarily works six days during the week, the employee will be entitled to no less than 36 working days during the sick leave cycle.

During the employee's first year of employment an employee is entitled to one day's sick leave for every 26 days worked.

A sick leave cycle is a period of 36 consecutive months.

What are the minimum requirements relating to parental leave, and does it apply to both parents or only mothers?

Section 41 of the Labour Act provides that a female employee that has completed 12 months continuous service for the employer is entitled to at least four weeks maternity leave before the expected date of delivery and at least eight weeks after the date of delivery. The provisions of the employment contract remain in force during the maternity leave and the employee cannot be dismissed during the period.

There is no provision in the law for paternity leave for male employees in the Labour Act.

What are the minimum requirements relating to family responsibility leave?

Family responsibility leave is not provided for explicitly in the Act.

Are employees automatically entitled to bonus payments?

Employers can agree to pay employees bonuses, but it is not an automatic entitlement.

Changing terms and conditions of employment

Can employment terms be changed without achieving agreement with the employees?

It appears that generally agreement is required but this is not explicitly outlined in the Labour Code.

Are employees commonly represented in their interactions with employers relating to changes to employment terms?

Yes.



EMPLOYERS CAN AGREE TO PAY EMPLOYEES BONUSES, BUT IT IS NOT AN AUTOMATIC ENTITLEMENT.





SOCIAL BENEFITS, TAX AND PENSIONS

Workplace injuries

In the event of workplace injury/disease, will employees be entitled to some form of compensation?

Yes, employees are entitled to compensation for the period of work missed due to injury on duty. For temporary disablement, the employee shall be entitled to 75% of their monthly salary and the maximum that can be paid out is dependent on how long the employee will be unable to work.

Taxation

What are an employer's obligations in respect of employee income tax, and what are the maximum personal tax rates that are applicable?

Tax is governed by the Income Tax Act. Individual employees contribute a percentage according to the income they earn on a progressive marginal scale. The highest level will be at 35%.

Other social benefits

What other employee social benefits must the employer either contribute to or deduct from employee contributions?

The employer can make deductions towards the employee's benefit fund. Further the employer will have to provide either N\$4500 or two months earnings (whichever is less) when an employee dies.

DATA PRIVACY

What data privacy obligations (if any) rest on employers in respect of their employees?

Per the Data Protection Act, 2004, an employer can only collect personal information if it is for a lawful purpose connected with a function or activity of the data controller and the collection is necessary for that purpose. Even then, consent from the employee must be obtained unless the personal information is in the public interest, is necessary for the compliance of a legal obligation, necessary for the performance of the employment contract or in the interests of justice.

BUSINESS TRANSFERS

Are employees automatically transferred to a new employer in the event of transfer of a business as a going concern?

No, there are no provisions that provide for the automatic transfer of employees in the event of a transfer of a business.

Namibian common law regards employment contracts to be of a highly personal nature, and consequently, restricts the free cession and delegation of rights and obligations under such contracts. The Labour Act contains no automatic termination or transfer provisions providing for the termination of employment or the transfer of employment contracts upon the transfer of an employer's business to another person.



Section 32 of the Labour Act merely provides for the automatic termination of employment in the case of the death, sequestration or liquidation of an employer, or, where the employer is a partnership, upon the dissolution of the partnership.

Accordingly, in the case of a sale of a business taking the form of a sale of the business assets, the legal position is as follows:

- unless the seller terminates the employment relationship with its employees, the sale of the business assets will not have any legal effect on the employment relationship between the seller and its employees; and
- to the extent that the purchaser of the business assets would be willing

to continue engaging the further services of the seller's employees, this would require the purchaser to enter into new employment contracts with these employees.

In this regard, s34 of the Labour Act specifically allows for the dismissal of employees on account of the re-organisation or the transfer of the business of an employer. Further details of the retrenchment procedure are set out herein. Such dismissal would have to be based on the redundancy of the employees.

In the case of a sale of a business taking the form of a sale of shares in a company, the legal position is that the employment relationship between the

company and its employees remains in all respects unaffected.

There are no requirements for either the selling entity or the company to consult or negotiate with the employees of the employing company, and the employees have no rights to be heard in relation to the sale of shares.

Where an employee disguises the transfer, the employee has remedies such as loss of future earnings, restoration of the operation or reinstatement. An example of a disguised business is where the employer purports to have gone out of business but continues to operate under another name without disclosing this to employees.

TERMINATION OF EMPLOYMENT

What are the statutory obligations and procedures for terminating a contract of employment?

Section 45 of the Labour Act provides that employment may be terminated for a valid and fair reason, after following a correct procedure. Employment may be terminated by agreement or for reasons based on misconduct, incapacity and redundancy. Employment is automatically terminated one month after the death or sequestration of an employee.

An employer must give a valid and fair reason for the dismissal and must comply with fair procedure. The onus rests on the employer to prove that the dismissal was fair.

What notice periods are applicable?

Short notice periods applicable include:

- one day if the employee was employed for four weeks or less;
- one week if the employee was employed between four weeks and one year; or
- one month if the employee was employed for more than one year.

Longer notice periods may be agreed. Payment instead of notice is also permitted.

Are any termination benefits payable in the event of a dismissal?

On termination the employer must pay the employee for work done prior to termination, for paid time off the employee may be entitled to, for outstanding annual leave, notice pay, and transport pay. If the dismissal was conducted in a fair manner and for a fair reason on account

of misconduct or incapacity, s52(2) provides that they will not be entitled to severance pay.

What are the dispute resolution mechanisms?

Disputes must be referred in writing to the Labour Commissioner. The Labour Commissioner must refer the dispute to an arbitrator to resolve the dispute through arbitration.

What remedies are available to employees?

Employees have a wide range of remedies available such as an interdict, a declaratory order, an order directing performance of any act that will remedy a wrong, reinstatement, compensation and an order for costs.

Can an employee be dismissed for operational requirements?

Yes, as provided for in s107(2) of the Labour Act. Employers may collectively dismiss employees due to re-organisation, transfer of a business, reduction or discontinuance of a business for economic and technological reasons. The dismissal is required to be substantively and procedurally fair.

The Labour Commissioner and recognised trade union (or if there is no recognised trade union, a workplace representative and employee) at the work place must be informed at least four weeks prior to the dismissal of the employer's intention to dismiss, the reasons for the dismissal, the number and categories of employees effected and the date of the dismissal. Negotiation between the parties must take place. Further, the selection criteria must be fair and objective.

An employer's failure to follow the prescribed procedure constitutes an offence and the employer may be fined.

Are any termination benefits payable in the event of a dismissal for operational requirements?

On termination the employer must pay the employee for work done prior to termination, as well as the accrued paid leave the employee may be entitled to, for outstanding annual leave, notice pay, transport costs and severance pay. Severance pay must be in an amount equal to at least one week's remuneration for each year of continuous service with the employer.

What are the dispute resolution mechanisms?

In the event of a dispute arising the employee may refer the matter to the Labour Commissioner who must then appoint a conciliator to help the parties resolve the dispute.

What remedies are available to employees?

The following remedies are available according to s46 of the Labour Act:

- reinstatement;
- re-employment;
- setting aside of disciplinary action or penalty; or
- an order as the circumstances require.

What notice periods are applicable?

At least four weeks' notice before intended dismissal.



**ON
TERMINATION
THE EMPLOYER MUST
PAY THE EMPLOYEE FOR
WORK DONE PRIOR TO
TERMINATION.**



THE RETIREMENT AGE IS 65 YEARS.

RETIREMENT

What is the normal retirement age?

The retirement age is 65 years. Employees that retire or resign at the age of 65 and have worked for the employer for a continuous period of 12 months are entitled to severance pay. Severance pay must be in an amount equal to at least one week's remuneration for each year of continuous service with the employer.

Are any termination benefits payable in the event of retirement?

Section 52 provides for severance pay equal to one week's remuneration for each completed period of 12 months of uninterrupted employment in the employment of that employer calculated at the rate at which such remuneration was paid to such employee immediately before such termination.

Further, s39(4) provides that on termination the employer must pay the following: for work done prior to termination, accrued

paid leave the employee may be entitled to and at least one quarter of their weekly remuneration in respect of each completed month of employment with the employer after the date on which they last became entitled to leave, or, in the case of an employee who has been employed for less than 12 months, after the date of commencement of their employment.

POST-TERMINATION RESTRAINTS

Enforceability of non-compete provisions

Can contractual non-compete provisions be enforced?

Restraint of trade agreements are valid in Namibia, subject to it protecting the proprietary interests of the employer and not merely to avoid competition. A restraint of trade agreement will only be valid and enforceable if the restraint is reasonable and not against public policy or interest (which may vary from time to time).

The employer need only show that a valid agreement exists, and that the employee has breached the agreement. The employee bears the onus of proof to show that the restraint is against public policy and unenforceable.

Confidentiality and trade secrets

What protections are offered to employers in respect of their confidential information/trade secrets?

No legislation exists to provide for the protection of employer's information. Namibian law recognises an employee's duty of good faith and to act in the interest of the employer and this duty would encompass protecting confidential information.





NIGERIA

Official language(s):

English, Yoruba, Hausa, Igbo

Population (approx.):

196m

Unemployment rate (2018):

19%

Name of court for labour matters:

Labour Court

Are pre-employment checks permissible?

Yes

Dismissal for misconduct: is there a requirement for procedural and substantive fairness?

Not provided for in legislation

Immigration: must foreign employees obtain a work visa?

Yes



BACKGROUND

Applicable legislation

- Labour Act, Chapter 198 of 1990
- National Minimum Wage (Amendment) Act, 2011
- Constitution of the Republic of Nigeria, 1999
- International Conventions

Regulatory rating

✓ *Heavily regulated.*

HIRING DECISIONS

May employers conduct pre-hire checks?

Yes, employers may conduct pre-employment checks. Medical examinations are required for certain employees that enter into employment contracts.

Hiring options

What hiring options are available to employers?

Hiring options include:

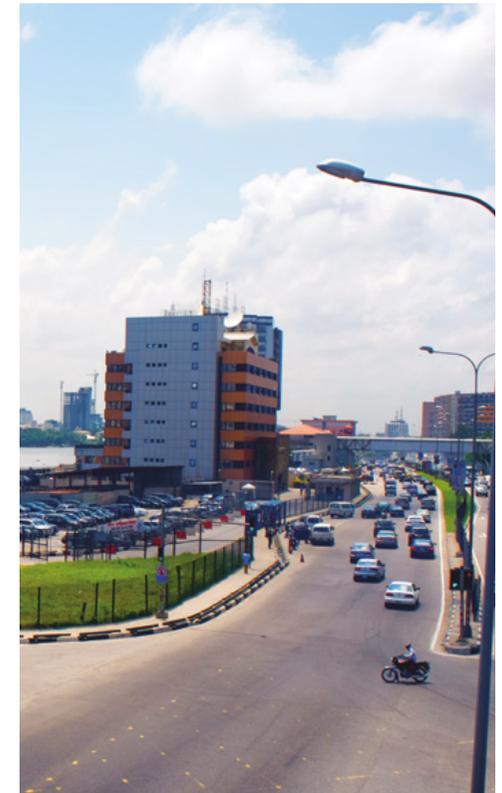
- employment through recruiters or labour brokers;
- employment based on contract on fixed-term or part-time;
- employment as an apprentice; or
- permanent employment.

Relevant permits may need to be obtained from the Minister and medical examinations will need to be conducted.

Immigration

Do foreign employees require permits to work and which visas may be obtained to allow foreigners to work?

Foreign employees require a permit to work in Nigeria. These permits include a CERPAC (Combined Expatriate Residence Permit and Aliens Card) document which is a combined work and residence document. An employment contract is necessary in order to qualify for the CERPAC.



Are there any limitations placed on employers' discretion to determine new hires?

There are no limitations on the identity of new hires other than a minimum age restriction which is 16 years old.

CONDITIONS OF EMPLOYMENT

Are there any formality requirements attached to employment contracts, eg written format and/or signed?

Yes, there are formal requirements for employment contracts. Contracts of employment must be in writing. The written contract must be provided no later than three months after the employee has commenced employment.



EMPLOYEES ARE ENTITLED TO 12 DAYS PAID SICK LEAVE ANNUALLY.

Employment contracts must contain the following information:

- the name of the employer;
- the name and address of the employee and place of engagement;
- the nature of the employment;
- if the contract is for a fixed-term the date on which the contract expires;
- the appropriate notice period;
- the wage rate, its calculation and method of payment;
- terms and conditions of employment including hours of work, holiday and holiday pay, incapacity of work due to sickness or injury and provision for sick pay; and
- any other special conditions of the contract.

Document retention obligations exist, and certain documents need to be retained up to a period of three years.

Probation

Can a probation period be used, and if so, is there a maximum prescribed period of probation?

The three months before an employee is obliged to provide an employee with written particulars is usually considered to be the probation period.

Minimum employment rights

Are any employees excluded from minimum employment rights?

Certain employees are excluded from minimum employment rights particularly those in the Labour Act. These employees include:

- public servants exercising administrative, executive, technical or exercising professional functions; or
- persons employed on a vessel or aircraft.

Is there a minimum wage requirement?

The minimum wage is currently governed by the National Minimum Wage (Amendment) Act. The act applies to every employer in Nigeria with the following exceptions:

- an establishment in which less than 50 workers are employed;
- an establishment in which workers are employed on part-time basis;
- an establishment at which workers are paid on commission or on piece-rate basis;
- workers in seasonal employment such as agriculture; or
- any person employed in a vessel or aircraft.

The Act allows the Minister for labour and employment matters to make such Orders or Regulations, published in the Federal Gazette, as to grant other exemptions as deemed necessary in the interest of the national economy, taking into consideration reports from wages boards or such other body as might make representation for exemption on this behalf.

The current minimum wage pursuant to s2 of the National Minimum Wage (Amendment) Act is the sum of N18000 (Nigerian Niara) per month.

What are the standard/maximum working hours? Are there prescribed minimum resting periods during the normal working day/week?

There are no specified working hours. Working hours need to be agreed or negotiated with the employer.

If an employee works more the six hours on a given day the employee may be allowed one or more rest intervals of not more the one hour.

What are the minimum requirements relating to overtime?

Any time worked over and above what is agreed to between the employee and employer will be considered overtime.

What are the minimum requirements relating to annual leave?

Employees are entitled to 12 paid working days holiday leave in a 12-month period. This does not include public holidays. In total, employees are entitled to 23 leave days (adding the 11 public holidays).

What are the minimum requirements relating to sick leave?

Employees are entitled to 12 days paid sick leave annually.

What are the minimum requirements relating to parental leave, and does it apply to both parents or only mothers?

Maternity leave is allowed six weeks before birth and six weeks after delivery. A minimum of 50% of the employee's salary is payable if the employee was employed for more than six months before taking the maternity leave. Some civil servants are entitled to six months of maternity leave. Paternity leave is limited to civil servants in the Lagos state for 10 days.

What are the minimum requirements relating to family responsibility leave (if any)?

No provision is made for family responsibility leave.

Are employees automatically entitled to bonus payments?

There isn't an automatic entitlement to bonus payment. This is a payment that is within the employer's discretion.

Changing terms and conditions of employment

Are employees automatically entitled to periodic increases, alternatively how do the parties normally achieve consensus on increases?

Wage increases are usually negotiated between employee and employee organisations and the relevant employer.

Can employment terms be changed without achieving agreement with the employees?

The employer can change the employment terms but must inform the employee within one month of such changes.

Are employees commonly represented in their interactions with employers relating to changes to employment terms?

Employees have a right to trade union engagement that may help them with interaction with the employer.



**NO PROVISION
IS MADE FOR
FAMILY
RESPONSIBILITY
LEAVE.**



SOCIAL BENEFITS, TAX AND PENSIONS

Workplace injuries

In the event of workplace injury/disease, will employees be entitled to some form of compensation?

Yes, employees are entitled to a claim through the Employees' Compensation Act. The employee's compensation will be a periodic payment that is equal to 90% of an estimate of the loss of remuneration resulting from the temporary injury or disease – but the limit is up until the employee reaches 55 years or if the employee is older than 55, a maximum payment of two years after the date of injury.

Return to work

Are employers obliged to reintegrate workers into the workplace after having recovered from workplace injuries?

Not expressly provided for in the legislation.

Medical aid benefits

Are employers obliged to provide employees with membership to medical aids or other assistance with medical costs outside of the context of workplace-related injury or disease?

Health cover is provided by the National Health Insurance Scheme. Participation

in the Scheme is not mandatory, but operational guidelines published state that participation is mandatory for private sector employers with 10 or more employees. The employer is required to contribute 10% of the employee's basic salary whereas the employee is required to contribute 5%.

Taxation

What are the employer's obligations in respect of employee income tax, and what are the minimum personal tax rates that are applicable?

Employers are obliged to deduct a contribution towards tax which is referred to as the PIT (Personal Income Tax). This is legislated by the PIT Act. In terms of the PIT Act the employer's deduction ranges from 7% - 24% depending on the amount of the amount of the employee's income.

Other social benefits

What other employee social benefits must the employer either contribute to or deduct from employee contributions?

The employer may with the consent of the employee deduct from employees' wages, contributions towards a provident or pension fund. Employees earning above a certain threshold need to contribute towards the National Housing Fund in terms of the Housing Act.



DATA PRIVACY

What data privacy obligations (if any) rest on employers in respect of their employees?

There is at present no specific regulation on data privacy however there was a proposal for a new Bill titled the Frivolous Petition Bill, 2015, yet to be legislated, which will allow monitoring of social media engagement. This Bill was withdrawn in May 2016.

BUSINESS TRANSFERS

Are employees automatically transferred to a new employer in the event of transfer of a business as a going concern?

There are two possible scenarios that exist that present a case of transfer of business:

- (a) an amalgamation of the business undertakings of two entities; and
- (b) the transfer of a business undertaking from one entity to another.

In the first scenario, the employees are automatically transferred to the surviving entity. However, post transfer, there are no existing laws that guide the treatment of employees, save for the terms of the contracts of employment, collective bargaining agreements and whatever terms have been documented in the scheme of merger filed with the Securities and Exchange Commission with respect to the arrangements relating to the employees of the dissolved company. Clause 428(2)(a)(iii)(e) of the Securities and Exchange Commission Rules, 2013 applicable in Nigeria requires the formal application for approval of a proposed merger be submitted to the Securities and Exchange Commission along with a Scheme Document detailing the plan for employees.

With respect to the second scenario, there are no specific laws that guide the treatment of employees. There are also no statutory provisions prescribing that employment contracts will automatically transfer. Employee protection is, therefore, dependent on the terms agreed with the seller under the transaction agreement, the terms of the contracts of employment and any collective bargaining agreements.

Is consultation or information disclosure required prior to transfer, and if so who must be consulted/ receive information, and what disclosures must be made?

Yes, the labour officer will need to establish that the workers have consented to the transfer.

Joint and several liability for employers?

If an employee is dismissed as a result a transfer the employer will need to pay compensation to the employee.

Is it possible to change terms and conditions of employment in the context of a business transfer?

Yes. Section 10 of the Labour Act which provides that the transfer of any contract from one employer to another shall be subject to the consent of the worker and the endorsement of the transfer upon the contract by an authorised labour officer.

What are the consequences in the event of non-compliance?

Not expressly provided for.



TERMINATION OF EMPLOYMENT

What are the statutory obligations and procedures for terminating a contract of employment?

The relationship between an employer and employee is regulated by the terms and conditions of the employment relationship in a contract of employment. These terms as contained in the contract determine matters such as the rights of the parties to terminate and grounds upon which the parties may exercise the right. Once the parties, in exercising this right, conform to the terms stated in the contract, then it is lawful and may not be considered as unfair. The common law principles, therefore, regulate the termination of the employment relationship in Nigeria and once parties comply with the agreed length of notice required to terminate the relationship, the termination of the contract cannot be deemed to be unlawful or unfair as the employer has complied with the need to

give notice. However, where no provision is made in the contract for the length of notice required for the termination, then s11 of the Labour Act shall apply. A notice, ranging from a day to a month, depending on the duration of employment, given by either of the parties is required to terminate the contract of employment. Provision is also made for payment *in lieu* of notice.

There is no statutory provision in the Labour Act applicable in Nigeria pertaining to the grounds that constitute a lawful and fair termination of employment.

Under Nigerian common law position, an employer may terminate the employment relationship for a good reason, bad reason or no reason at all. There is, therefore, no requirement that the employer must give a reason for the termination. The Labour Act does not require an employer to give a reason for the termination of a contract of employment. However, where the employer elects to give a reason for the termination, then it becomes necessary for the employer

to prove the reason stated in the notice - failing which the termination may be adjudged as unfair termination. The Courts in adjudicating same have tended to rely on the terms and conditions to determine if same was lawful and fair. Therefore, in order for a termination to be fair or legal it must be in line with the employee's terms and conditions, in absence of which, the law has usually considered as an implied term of the contract of employment that it is terminable upon reasonable notice. Once in accordance with the terms of the contract, the motive behind the termination is irrelevant to the lawfulness or fairness.

Dismissal will be regarded as lawful even though the contractual or statutory notices for termination had not been given in the case where the employer exercises their right of summary dismissal provided the reason for such exercise is justifiable and that the rules of natural justice had been complied with.

Termination of misconduct

What fair process requirements exist?

- The employee can be dismissed for misconduct. Although the position in Nigeria is that an employer can terminate employment without giving any reason or for no reason at all, where the contract of employment contains grounds upon which the employment can be terminated (for example fraud, theft, gross insubordination sleeping at work, verbal or physical violence). Sufficient notice must be given to the employee prior to dismissal for misconduct. Thereafter, to be justifiable, it must be substantially fair ie the termination must fall under the agreed grounds and the ground must be stated as the cause for the dismissal.

What notice periods are applicable?

- one day, where the contract has continued for a period of three months or less;
- one week where the contract has continued for more than three months but less than two years;
- two weeks where the contract has continued for a period of two years but less than five years; and
- one month where the contract has continued for five years or more.

Where the notice is for a period of one week or more, the notice shall be in writing.

Are any termination benefits payable in the event of a dismissal for misconduct?

An employee would be entitled to accrued benefits such as unpaid salaries, debts and gratuities. All wages payable in money shall be payable at the end of the notice period.

What remedies are available to employees?

The employee may file a civil action and claim damages and compensation. The employee could also be entitled to re-instatement where there was a breach of statute. However, if it was a mere breach of contract – ie wrongful dismissal, the employee would only be entitled to compensation.

Third party approval for termination/ termination documents?

Third party approval is not necessary.

Termination for incapacity

An employee can be dismissed for incapacity if they become incapacitated by accident or sickness during the course of employment or found to be unfit for employment after medical examination.

What fair process requirements exist?

A medical examination by a medical assessor must occur.

What substantive fairness requirements exist?

The employer shall seek to provide employment suitable to the employee's capacity provided the employer is still willing to perform part of their contract.

What notice periods are applicable?

In order for a termination to be fair or legal it must be in line with the employee's terms and conditions, in absence of which, the law has usually considered as an implied term of the contract of employment that it is terminable upon reasonable notice. Once in accordance with the terms of the contract, the motive behind the termination is irrelevant to the lawfulness or fairness.



THE EMPLOYEE CAN BE DISMISSED FOR MISCONDUCT.

Are any termination benefits payable in the event of a dismissal for incapacity?

Yes, the employee would be entitled to 54 months' salary as compensation. Where an injury results in permanent total incapacity of such a nature that the injured workman must have the constant help of another person, additional compensation shall be paid amounting to up to one quarter of the 54 months' salary.

What are the dispute resolution mechanisms?

The dispute will be referred to the relevant court that has jurisdiction.

What remedies are available to Employees?

The employee has recourse to the court to make an order for compensation.

Is third party approval for termination/ termination documents required?

Except that of a registered medical practitioner, no third-party approval is required.

Termination for operational requirements

What fair process requirements exist?

Employees can be terminated for redundancy. Redundancy is regulated by the Labour Act. Redundancy is defined as the involuntary and permanent loss of employment caused by an excess in manpower. The redundancy provisions in the Labour Act are only applicable to "workers" as defined in the Labour Act. The employer bears the onus to prove the redundancy.

Procedural requirements exist. They include notifying trade unions or workers' representatives of the extent and reasons for the redundancy.

The employer is required to adopt the 'last in first out' principle subject to factors that include skill, ability and reliability of the employee.

What are the dispute resolution mechanisms?

The dispute will be referred to the relevant court that has jurisdiction.

What remedies are available to employees?

The employer is obliged to negotiate redundancy pay out on termination of an employee particularly for those employees who are not protected by regulation stipulated in the Labour that are entitled to compulsory redundancy pay outs.

Is third party approval for termination/ termination documents required?

The trade union or the worker representative must be informed of the reason for the termination.

Termination benefits

Are any termination benefits payable in the event of a dismissal for misconduct?

The employer shall use its best endeavours to negotiate redundancy payments to any discharged workers who are not protected by regulations. Unless agreed to in a collective agreement or with the employee, it appears that no provision is made with regard to the amount of the redundancy payment.

Are any termination benefits payable in the event of a dismissal for incapacity?

Not expressly provided for.

Are any termination benefits payable in the event of retirement?

An employee is entitled to a benefit in terms of their retirement savings account with the Pension Fund Administrator of Nigeria.

RETIREMENT

What is the normal retirement age?

The retirement age in Nigeria varies considerably depending on industry the employee is employed in. In the public sector, retirement is 65 years; or after 35 years of service; is 70 years of age for university professors and judges; 60 years of age for police officers, and primary and secondary school teachers. However, there is no uniform retirement age for the private sector with most private entities having discretion to determine retirement age for their employees (60 years old or 35 years of service is the usual age).





RESTRAINT OF TRADE AGREEMENTS AS CONTAINED IN EMPLOYMENT CONTRACTS ARE COMMON AND VALID IN NIGERIA.

POST-TERMINATION RESTRAINTS

Can contractual non-compete provisions be enforced?

Restraint of trade agreements as contained in employment contracts are common and valid in Nigeria. However before enforcing such agreements the court considers several factors which include the restriction range (time and geographical), the scope of restraint, nature of information and knowledge acquired by the employee. Since these factors are a question of fact, the attitude of the court will vary from case to case depending on the facts of each case.

Where the restraint seeks to protect the proprietary interest of the employer, the

court may enforce the agreement, but where it is unreasonable, the court is likely to declare it void; as noted earlier, however, reasonableness is determined on a case by case basis.

Section 131(1) of the Evidence Act provides that in civil matters, the burden of proof rests on the person who asserts that such fact/right exists. In the event that an employer initiates an action to enforce the clause, the employer bears the onus to prove the reasonableness of the restraint.

What protections are offered to employers in respect of their confidential information/trade secrets?

There aren't any specific provisions regarding confidentiality of employees' information under the Labour Law Act.

However, under the common law, an employee is generally obligated not to disclose confidential information of an employer and this obligation is often secured by the inclusion of express terms in this regard in the contract of employment which contract, in the event of any dispute would and referred to be interpreted by the Courts.

Note that the Constitution (as amended) provides for the right to privacy of citizens, their homes, correspondence, telephone conversations, and telegraphic communications. This provision is however not detailed and while it may hardly offer much protection to corporate entities, the privacy rights of individual employers and employees alike are secured thereby.





RWANDA

Official language(s):

French, English, Kinyarwanda, Swahili

Population (approx.):

12.5m

Unemployment rate (2018):

16.7%

Name of court for labour matters:

Labour Court

Are pre-employment checks permissible?

Yes

Dismissal for misconduct: is there a requirement for procedural and substantive fairness?

Not fully regulated

Immigration: must foreign employees obtain a work visa?

Yes, foreigners are required to apply for a residence permit to live and work in Rwanda





BACKGROUND

Applicable legislation

- Code du Travail Loi 13/2009
- Law No 51/2001 of 30/12/2001, Establishing the Labour Code, Ministerial Order No 03 of 13/07/2010.
- Law No 13/2009 of 27/05/2009, Regulating Labour in Rwanda
- New Immigration Law, No 04/2011 of 21/03/2011

Regulatory rating

✓ *Heavily regulated.*

HIRING DECISIONS

Pre-hire checks

May employers conduct pre-hire checks?

Yes, this is permissible to ensure a clean criminal record and suitability for the job.

Hiring options

What hiring options are available to employers?

Hiring options include:

- fixed-term contracts; (can only be for a maximum of two years);
- permanent employment;
- daily employment;
- seasonal employment;
- temporary worker;
- casual worker;
- apprenticeship contract; and
- internship contract.

Immigration

Do foreign employees require permits to work and which visas may be obtained to allow foreigners to work?

Foreign employees require a resident permit to work in Rwanda. This permit will allow the employee to reside and work in Rwanda.

Article 10 of the Code du Travail provides that a foreign employee can only contract legally with the employer after getting prior authorisation from the labour department. This authorisation is applied for by the employer according to a procedure to be defined by a decree from the Minister holding labour in their attributions.



Any business that invests more than \$100 000 in Rwanda is automatically granted the right to appoint three expatriates. Expatriates may work in Rwanda provided they have a work permit issued by the Department of Employment of the Ministry of Public Service and Labour. Any enterprise may recruit any category of expatriate skilled labour if Rwandan employees are not available. A foreigner who has a contract of employment of more than 90 days must apply for a work permit within 15 working days from the day of entry in Rwanda. However, foreigners with a master's degree or higher qualification do not need a work permit.

Are there any limitations placed on employers' discretion to determine new hires?

Employers may not employ children under the age of 16 years old. Employers are also prohibited from discriminating against new hires.



WORKING HOURS CANNOT EXCEED 45 HOURS OF WORK PER WEEK.

CONDITIONS OF EMPLOYMENT

Are contracts of employment required?

Contracts of employment are required for all employees in Rwanda as read from arts 5-7 of the Code du Travail. This should be read together with art 2 of the Code du Travail which provides that an employee can either be statutory or contractual and refers to any person, regardless of their sex and nationality who has undertaken to put their professional activity, for pay, under the direction and the authority of another person, natural, or public or private organisation.

Are there any formality requirements attached to employment contracts, eg written format and/or signed?

While most employment contracts can either be completed orally or in writing, certain contracts must be in writing for example employment contracts signed in Rwanda but which shall be implemented in a foreign country.

Probation

Can a probation period be used, and if so, is there a maximum prescribed period of probation?

Yes, probationary periods are permitted up to a maximum period of six months. Probationary periods must also be stipulated in writing.

Minimum employment rights

Are any employees excluded from minimum employment rights?

Yes, certain employees are excluded. For example, public services employees are governed by separate statutory provisions.

Is there a minimum wage requirement?

Yes. However, the Ministry of Labour has been given the discretion to determine the minimum wage by ministerial order but this has not occurred yet.

What are the standard/maximum working hours? Are there prescribed minimum resting periods during the normal working day/week?

Working hours cannot exceed 45 hours of work per week. The hours of daily work and rest periods are determined by each employer. The rest period shall not be less than 24 consecutive hours per week. It normally takes place on a Sunday.

What are the minimum requirements relating to overtime?

Overtime can be determined by the Minister of Labour.

What are the minimum requirements relating to annual leave?

Any employee who has completed a one year of service with an employer has the right to annual leave. Employees who work on a continuous basis are entitled to pay at 1.5 times more their daily wage rate. Further, the entitlement to annual leave increases the longer an employee works for an employer – for every three years worked; the entitlement to leave increased by one day per year.

If an employee is below the age of 16, they'd be entitled to two days leave per month.

What are the minimum requirements relating to sick leave?

An employee is entitled to three months' paid sick leave which must be certified by a doctor.



EMPLOYEES NEED TO AGREE TO AMENDMENTS TO THE TERMS OF THE EMPLOYMENT CONTRACT.

What are the minimum requirements relating to parental leave, and does it apply to both parents or only mothers?

Article 68 of the Code du Travail provides that the maternity leave allocated is 12 consecutive weeks.

The mother with no maternity insurance coverage shall, during the first six weeks of her maternity leave, have the right to her entire salary. During the last six weeks of her maternity leave, the mother may either resume service and receive her full salary or have the right to 20% of her salary.

The law does not provide for parental leave for male employees.

What are the minimum requirements relating to family responsibility leave (if any)?

The worker has the right to an incidental leave in case of good or unfortunate events which may occur in their family. Incidental leave shall be determined by an order of the Minister of Labour.

Are employees automatically entitled to bonus payments?

No automatic entitlement but the employer has discretion to make bonus payments.

Changing terms and conditions of employment

Are employees automatically entitled to periodic increases, alternatively how do the parties normally achieve consensus on increases?

This is not an automatic entitlement but can be agreed to in the contract of service.

Can employment terms be changed without achieving agreement with the employees?

Employees need to agree to amendments to the terms of the employment contract.

Are employees commonly represented in their interactions with employers relating to changes to employment terms?

Yes, employees can be represented by their respective trade union.

SOCIAL BENEFITS, TAX AND PENSIONS

Workplace injuries

In the event of workplace injury/disease, will employees be entitled to some form of compensation?

Yes, employees will be entitled to compensation from the Rwanda Social Security Board as occupational hazard benefits that cover morbid conditions, incapacity for work and invalidity due to work injury and occupational diseases. Both employees and employers in the formal economy make contributions to the Board.

According to art16 of the Labour Code, "in the case of industrial accident, the employee gets an allowance equal to their monthly salary during a period of six months or until he or she starts being paid by the social security fund before six months."

Return to work

Are employers obliged to reintegrate workers into the workplace after having recovered from workplace injuries?

The employer must make efforts to re-deploy the employee to a post

corresponding to their aptitude and capacities. If such a position cannot be found the employer can dismiss the employee however the employer must notify the Labour Inspector of this.

Medical Aid benefits

Are employers obliged to provide employees with membership to medical aids or other assistance with medical costs outside of the context of workplace-related injury or disease?

Any company or institution, depending on its size, can offer health or medical services to its workers. The employer must transfer all wounded or ill persons not likely to be treated with their available services, to the nearest medical center.

Taxation

What are an employer's obligations in respect of employee income tax, and what are the maximum personal tax rates that are applicable?

Income tax is paid on all income earned domestically and from a foreign source.

Other social benefits

What other employee social benefits must the employer either contribute to or deduct from employee contributions?

The Rwanda Social Security Board is the country's pension scheme. All salaried workers contribute towards this scheme. Employers contribute 3% of the employee's gross salary towards the scheme. The employee also contributes 3% towards the scheme.

The employer also contributes 2% of the employee's gross salary towards a mandatory occupational hazards scheme.

DATA PRIVACY

What data privacy obligations (if any) rest on employers in respect of their employees?

Data privacy obligations are usually regulated by the employer's policy or internal rules.

BUSINESS TRANSFERS

Are employees automatically transferred to a new employer in the event of transfer of a business as a going concern?

A contract of employment is not transferable from one employer to another without the worker's consent. A transfer shall not interrupt the worker's continuity of service and their work continues with the new employer as if they were the initial employer.

Is consultation or information disclosure required prior to transfer, and if so who must be consulted/receive information, and what disclosures must be made?

The employees need to be consulted.

Joint and several liability for employers?

Not provided for.

Is it possible to change terms and conditions of employment in the context of a business transfer?

The worker's consent is required.

What are the consequences in the event of non-compliance?

Not expressly provided for.

TERMINATION OF EMPLOYMENT

What are the statutory obligations and procedures for terminating a contract of employment?

Employment contracts may be terminated on the basis of misconduct, capacity or redundancy.

Termination for misconduct

What fair process requirements exist?

Apart from the notice period, the employer shall give the employee a reasonable opportunity to exculpate themselves.

What substantive fairness requirements exist?

The Code du Travail does not outline substantive fairness requirements save to mention that the type of misconduct shall be an important factor in determining the penalty against the employer.

What notice periods are applicable?

The employee is entitled to 15 days if they have worked less than a year, and one month if the employee has worked more than a year. However, an employer can dismiss an employee without notice for serious misconduct. Where there is gross misconduct, the employer must inform the employee of the observation within 48 hours.

Are any termination benefits payable in the event of a dismissal for misconduct?

The employee is entitled to payment *in lieu* of notice and any accrued salary or benefits.

What are the dispute resolution mechanisms?

In the event of a dispute, employees and/or their representatives will first attempt to settle the matter with the employer through the worker's delegate. If this does not succeed, the employee and their representative will forward the matter to the Labour Inspector for reasonable settlement. If this does not succeed, the dispute may be taken before a competent court.

What remedies are available to employees?

Any unfair termination of contract may result in damages. Damages paid to the unfairly dismissed employee cannot exceed their salary for six months including their monthly allowances and any other advantages. If the employee has worked for more than 10 years, the damages could be doubled.

Is third party approval for termination/ termination documents required?

No third-party approval required.

Termination for incapacity

What fair process requirements exist?

Not completely clear from the Code du Travail.

What substantive fairness requirements exist?

Not completely clear from the Code du Travail.

What notice periods are applicable?

The worker is entitled to 15 days if they have worked less than a year, and one month if the worker has worked more than a year.

Are any termination benefits payable in the event of a dismissal for incapacity?

Yes, the employee would be entitled to a monetary sum equivalent to a percentage of the employee's salary depending on whether the incapacity is total or partial, permanent. The employer would also be entitled to severance pay if they worked for at least one year in the same way as those dismissed for misconduct.

What are the dispute resolution mechanisms?

The matter can be referred to the Labour Inspector for settlement if the workers delegate fails to settle the matter with the employer. If the Labour Inspector cannot reach settlement, the matter can be referred to court.

What remedies are available to employees?

Any unfair termination of contract may result in damages. Damages paid to the unfairly dismissed employee cannot exceed their salary for six months including their monthly allowances and any other advantages. If the employee has worked for more than 10 years, the damages could be doubled.

Is third party approval for termination/ termination documents required?

Not required.

Termination benefits

At least one month prior to giving effect to the redundancy.

Are any termination benefits payable in the event of a dismissal for misconduct?

Depending on the years of service, employees are entitled to severance pay ranging from:

- one month's salary for each year worked if the employee has worked for five years or less;
- two months' salary for each year worked for five to 10 years of service;
- three months' salary for each year worked for 10 to 15 years of service;
- four months' salary for each year worked for 15 to 20 years of service;
- five months' salary for each year worked for 20 to 25 years of service; and
- six months' salary for each year worked for more than 25 years of service.

What are the dispute resolution mechanisms?

Similar route of going to the Labour Inspector if that fails to a court.

What are the employee remedies?

If the employee completed at least a period of 12 months of employment the employee shall be entitled to the following:

- the average monthly salary for the worker with less than five years of working experience in the same institution;
- two times the average monthly salary for the worker with working experience of between five and 10 years in the same institution;
- three times the average monthly salary for the worker with working experience of between 10 and 15 years in the same institution;
- four times the average monthly salary for the worker with working experience of between 15 and 20 years in the same institution;
- five times the average monthly salary for the worker working experience of between 20 and 25 years in the same institution; or
- six times the average monthly salary for the worker with working experience of over 25 years in the same institution.

Third party approval for termination/ termination documents?

The staff delegation need to be informed.

What notice periods are applicable?

At least one month.

Termination benefits

Are any termination benefits payable in the event of a dismissal for misconduct?

Dismissal benefits depends on number of years of service.

Are any termination benefits payable in the event of a dismissal for incapacity?

Dismissal benefits depends on number of years of service.

Are any termination benefits payable in the event of a dismissal for operational requirements?

Dismissal benefits depends on number of years of service.

Are any termination benefits payable in the event of voluntary resignation by an employee?

This is not explicitly provided for in the labour legislation.

Are any termination benefits payable in the event of retirement?

A retiring employee is entitled to accompanying allowance depending on years of service in addition to usual termination benefits.





THE MINIMUM PENSIONABLE AGE IS 55 YEARS.

RETIREMENT

What is the normal retirement age?

The minimum pensionable age is 55 years.

A retiring worker shall benefit from accompanying allowance which is calculated in the same manner determined by the Rwanda Social Security Board. If an employee has worked for a minimum period of 15 years, their pension will be calculated at 30% of their average salary in the last five years. Where an employee has worked for more than 15 years, their retirement benefits are calculated with an additional 2% for each additional year of service.

POST-TERMINATION RESTRAINTS

Enforceability of non-compete provisions

Can contractual non-compete provisions be enforced?

The law is silent on the validity and enforceability of non-compete provisions in contracts of employment.

Confidentiality and trade secrets

What protections are offered to employers in respect of their confidential information/trade secrets?

Most employers are permitted to enter into confidentiality agreements with employees to prevent the disclosure of sensitive information.



SOUTH SUDAN

Official language(s):

English

Population (approx.):

11 083 076

Unemployment rate (2018):

11.5 %

Name of court for labour matters:

Labour Court

Are pre-employment checks permissible?

Yes

Dismissal for misconduct: is there a requirement for procedural and substantive fairness?

Yes

Immigration: must foreign employees obtain a work visa?

Yes



BACKGROUND

Applicable legislation

- Labour Act, No 64 of 2017 (Labour Act); and
- Pensions Fund Act, No 61 of 2012 (Pensions Fund Act).

Regulatory rating

 *Heavily regulated.*

HIRING DECISIONS

Can employers conduct pre-employment checks?

Yes, in terms of section 116 of the Labour Act, the Minister may require applicants for hazardous or night work to undergo medical examinations at the expense of the employer.

What hiring options are available to employers?

- Contracts for a definite period;
- Contracts for an appropriate period; and
- Contracts for the performance of a specific task.

IMMIGRATION

Are there any limitations placed on employers' discretion to determine new hires?

There are no discernible limitations placed in law apart from the need for foreign employees to be in possession of a valid work permit. In addition, any foreign employer shall give priority of employment, of at least 80% at different levels of management, to nationals, especially where the necessary skills are available.

CONDITIONS OF EMPLOYMENT

Are there any formal requirements for employment contracts?

Yes, any contract which exceeds three (3) months' shall be reduced to writing by the employer. There must be three (3) signed

copies of the contract. Each party must retain a copy of the contract and the third copy must be filed with the Commission for Conciliation, Mediation and Arbitration. A contract of employment must contain the right and obligations of the parties as set out in section 43 of the Labour Act. Where there is no written contract between the parties, section 43 of the Labour Act shall be deemed to be the terms and conditions of the contract of employment.

An employer may not enforce their rights in terms of a contract of employment until the employee has read and signed the contract, either by name or thumb print/stamp. In the absence of a contract, a worker may prove his entitlements by means of any kind of evidence.

Are probationary periods permitted in South Sudan?

Yes, in terms of section 42(2) of the Labour Act, an employer may require an employee to serve a probationary period which may not exceed three (3) months. The probation period may not be extended. Contracts which include a probationary period are deemed to be an indefinite contract if the probation period is not specified and the probationary period has lapsed without the contract being terminated by either party.



Are fixed-term contracts of employment allowed?

Yes. A contract of service may be for a defined period and for the performance of a specific task. The contract must stipulate the defined period or specific task, failing which it shall be deemed to be an indefinite contract of employment. Fixed-term contracts are also permitted where an employee is replacing another employee who is absent for a period of time. A fixed-term contract shall not exceed two (2) years and may only be renewed once within the same enterprise. The renewal period shall be considered as continuous with the previous period of service. In the event that a worker continues in service

after the duration of the period of renewal, he shall be deemed to be contracting for an indefinite period.

Minimum employment rights

Are any employees excluded from minimum employment rights?

The Labour Act does not apply to the army, organised forces, national security, judges, government legal counsels, diplomatic service and constitutional post holders.

Is there a minimum wage requirement?

Presently, South Sudan does not have a statutory minimum wage.

What are the maximum working hours?

The normal working hours of an employee may not exceed forty (40) hours per week, or eight (8) hours per day. An employer may require an employee to work not more than nine (9) hours for one or more days per week, provided that the employees working hours will be proportionately reduced on another day, such that an employee's working hours do not exceed more than forty (40) hours a week. The

normal working hours of an employee engaged in shift work shall not exceed forty (40) hours when averaged over a three (3) week period. In addition, an employee who works for a continuous period of five (5) hours is entitled to a one (1) hour break. Any rest period of less than half an hour will be considered as part of working time.

What are the minimum requirements relating to overtime?

An employer may agree with an employee to work not more than three (3) hours of overtime in a day or ten (10) hours overtime in a week. An employee may be required to work beyond the overtime limits provided in the Labour Act in the event of an emergency. Remuneration for overtime is calculated at 1.5 times the hourly rate on normal days and 2 times the hourly rate on official and weekly holidays. Overtime shall not apply to employees employed in senior management positions, employees subject to the Civil Service Act, 2011 in positions classified as Leadership or Super Grade Category position and where an employee has been granted leave *in lieu* of remuneration for overtime.



**PRESENTLY, SOUTH SUDAN
DOES NOT HAVE A
STATUTORY
MINIMUM WAGE.**



What the weekly rest and public holidays requirements?

An employee shall be entitled to a weekend rest period of not less than twenty-four (24) consecutive hours. Weekly rest days are to be taken on such day as customary or as agreed between the parties.

Employees are entitled to paid leave on all Public Holidays declared by the Ministry of Labour, Public Service and Human Resource Development (Ministry) public holidays.

What are the minimum requirements relating to annual leave?

An employee who has completed one (1) year of continuous service with the same employer shall be entitled to annual leave on the following basis:

- Twenty-one (21) days for continuous years of service between 1 – 3 years;
- Twenty-five (25) days for continuous years of service between 3 – 15 years; or
- Thirty (30) days for continuous years of service of fifteen (15) or more years.

Annual leave is to be taken at such times as agreed between the employer and the employee, provided that the employer does

not unreasonably refuse an application for annual leave. Untaken annual leave shall accumulate from year to year. Where an employee has accumulated two (2) years untaken annual leave, he or she may enter into a written agreement with the employer to accept financial compensation for half of the untaken annual leave entitlement.

What are the minimum requirements relating to sick leave?

An employee is entitled to twelve (12) days sick leave with full pay, per year of continuous service. An employee shall notify the employer as soon as they become aware of their incapacity to work. An employer may require an employee to provide a medical certificate verifying the employee's incapacity to work as well as the anticipated duration thereof.

What are the minimum requirements relating to parental leave?

According to section 64(1) of the Labour Act, a female employee is entitled to ninety (90) days maternity leave with full pay; and forty-five (45) days for breastfeeding while working for half day. Section 64(2) provides

that the ninety (90) day maternity leave entitlement must be taken after the birth of the child. Female employees who suffer a stillbirth, or a miscarriage are entitled to six (6) weeks maternity leave.

Section 65 of the Labour Act also provides that male employees are entitled to two (2) weeks paternity leave on full pay to be taken within three (3) days of the birth of a child or immediately after a miscarriage by his wife.

What are the minimum requirements relating to family responsibility leave?

An employee with at least three (3) months' continuous service and who works for more than four (4) days a week is entitled to three (3) days paid compassionate leave per annum. Compassionate leave may be exercised in the event of the death of a family member or the illness or injury to their child or spouse. Compassionate leave does not accumulate from one year to another.



BONUS PAYMENTS ARE MADE AT THE DISCRETION OF THE EMPLOYER.

Are employees automatically entitled to bonus payments? If not, is it common that bonuses are paid?

Bonus payments are made at the discretion of the employer.

Changing terms and conditions of employment

Are employees automatically entitled to periodic increases, alternatively how do the parties normally achieve consensus on increases?

This is not an entitlement provided for in law but may be agreed upon between the parties.

Can employment terms be changed without achieving agreement with the employees?

Terms and conditions of employment may not be altered without the employee's consent. Further, changes cannot be made that are contrary or less favourable to the minimum conditions provided for in law.

Are employees commonly represented in their interactions with employers relating to changes to employment terms?

Yes.

TERMINATION OF EMPLOYMENT

Employers may dismiss an employee for the following reasons:

- Incapacity due to illness or injury;
- repeated unsatisfactory work performance;
- gross misconduct which has a substantial connection to the employer; or
- operational requirements.

Can an employee be dismissed for misconduct?

Yes, an employee may be dismissed for misconduct provided that the following requirements are met:

- the conduct of the employee constitutes gross misconduct;
- the employer has previously notified the employee of the possibility of termination in the event of gross misconduct by the employee; and

- the employer has established that the employee has committed gross misconduct after having (i) explained the alleged gross misconduct to the employee, (ii) provided the employee with evidence, (iii) provided the employee with an opportunity to respond to the allegations and evidence, and (iv) given due consideration to all circumstances and available evidence, including the response of the employee to the allegations of gross misconduct.

The actions of an employee that would constitute gross misconduct are outlined in section 76 of the Labour Act.

What notice periods are applicable?

Save in an instance of summary dismissal in the event of gross misconduct, the following notice periods will apply to dismissals for misconduct and incapacity:

- after continuous service for a period of one (1) year or more, one (1) months' notice to the other party;
- after continuous service by the employee for six (6) months or more, but less than one (1) year, two (2) weeks' notice to the other party; or
- after continuous service by the employee for less than six (6) months, one (1) weeks' notice to the other party.

Parties may agree to longer notice periods, payments *in lieu* of notice, or an employer may waive their right to notice at the request of the employee. In terms of section 82 of the Labour Act, if after the day on which the notice of termination expires, an employer requests an employee to remain in employment, or an employee continues to work without the express dissent of the employer, the notice of termination shall be deemed to be null and void and the contract of employment shall remain valid and enforceable.





**THE ACTIONS OF
AN EMPLOYEE THAT
WOULD CONSTITUTE
GROSS
MISCONDUCT
ARE OUTLINED IN
SECTION 76 OF THE
LABOUR ACT.**

Can an employee be dismissed for incapacity?

South Sudan recognizes incapacity both in the form of physical incapacity as a result of illness or injury as well as poor work performance. In terms of section 74 of the Labour Act, an employer may terminate a contract of employment where an employee is incapable of performing work required in terms of their employment contract due to an illness or injury certified by the South Sudan Medical Commission to be permanent. In addition, in terms of section 75 of the Labour Act, the

employer may dismiss an employee for unsatisfactory performance, provided the employer has:

- notified an employee of the possibility of being dismissed for poor work performance;
- explained the manner in which the employee has failed to meet the required standards;
- provided the employee with an opportunity to make representations in defence and has considered the employees defence; and
- provided the employee with a reasonable opportunity to improve their performance.



What notice periods are applicable?

The standard notice periods for dismissals outlined in section 72 of the Labour Act apply to dismissals for incapacity related to poor work performance.

What dispute resolution mechanisms are available to the employee when the employee is dismissed for misconduct or poor work performance?

Where a dispute arises, it must be referred to the Commission for Conciliation, Mediation and Arbitration. If the dispute remains unresolved, the matter may be referred to the Labour Court.

What remedies are available to the employee when the employee is dismissed for misconduct or poor work performance?

In terms of section 85(1) of the Labour Act, the court may order the following:

- reinstatement;
- relocation to a comparable position on the same terms and conditions;
- payment of an amount equivalent to any wages/salaries lost by such employee as a result of the termination; or
- compensation in the event of reinstatement or re-engagement.

Where an employee is unfairly dismissed, they are also entitled to severance pay in line with section 80(1)(a) of the Labour Act. In addition, where employees are dismissed for physical incapacity, section 80(1)(c) entitles them to severance pay.

Can an employee be dismissed for operational requirements?

Yes, an employee may be dismissed for operational requirements in terms of sections 73(1)(d) and 77 of the Labour Act.

An employer may not terminate the contract of employment of an employee on account of redundancy unless the employer has:

- notified the Ministry of the intended termination together with all the relevant information no less than two (2) months prior to the intended date of termination; and
- if an employee to be affected is a member of a registered trade union, notified that trade union and any work place representatives of the said union not less than thirty (30) days prior to the intended termination on the account of redundancy.

Are any termination benefits payable in the event of a dismissal for operational requirements?

According to section 77(3) of the Labour Act, an employee whose employment is terminated on account of redundancy, after continuous service with the same employer for one (1) year or more, shall be entitled to receive, *inter alia*, severance pay equal to two (2) weeks wages/salaries for each completed year of continuous service with the employer. Further, section 81 of the Labour Act provides for a gratuity payment to all employees who have served more than one (1) year of service with an employer. In the event of redundancy due to the insolvency of the employer,

the Insolvency Act, 2011 shall govern an employee's claim for wages/salaries, severance pay and other entitlements.

What dispute resolution mechanism are available to the employee when the employee is dismissed for operational requirements?

Where a dispute arises, it must be referred to the Commission for Conciliation, Mediation and Arbitration. If the dispute remains unresolved, the matter may be referred to the Labour Court.

Employee remedies?

An employee is entitled to the remedies set out in section 85 of the Labour Act where the dismissal is deemed to be unfair.

Third party approval for termination/ termination documents?

The employer must notify the Ministry at least two (2) months before the intended date of the dismissals.

SOCIAL BENEFITS, TAX AND PENSIONS

Workplace injuries

In the event of workplace injury/disease, will employees be entitled to some form of compensation?

Employees are obliged to notify the labour inspectors of serious injuries or the incapacity of an employee. In terms of section 80(1)(c) and (d) of the Labour Act, severance pay is payable where an employee's contract terminates due to physical incapacity or in the event that the employee dies.



AN EMPLOYEE MAY BE DISMISSED FOR OPERATIONAL REQUIREMENTS IN TERMS OF SECTIONS 73(1)(D) AND 77 OF THE LABOUR ACT.



IN TERMS OF SECTION 51 OF THE LABOUR ACT, INCOME TAX IS TO BE DEDUCTED FROM THE WAGES/SALARY OF AN EMPLOYEE.

Return to work

Are employers obliged to reintegrate workers into the workplace after having recovered from workplace injuries?

Apart from the obligation to report injuries, there is no obligation to reintegrate workers.

Medical aid benefits

Are employers obliged to provide employees with membership to medical aids or other assistance with medical costs?

The Labour Act does not specify employer contributions to a medical aid scheme. However, an employer is obliged to provide basic medical treatment to an employee in the event of work place injury.

Taxation

What are the employer's obligations in respect of employee income tax?

In terms of section 51 of the Labour Act, Income Tax is to be deducted from the wages/salary of an employee.

Other social benefits

What are other social benefits contributions must be made?

Employers and employees must make contributions to the South Sudan Pensions Fund.

DATA PRIVACY

What data privacy (if any) obligations rest on employers in respect of their employees?

There is currently no data protection legislation in South Sudan. However, the right to privacy is enshrined in the Labour Act. In terms of section 14 of the Labour Act, during the selection, hiring or the termination of an employees contract of employment, an employer may not (i) collect personal data that is irrelevant to the inherent requirements of the position, (ii) cause or permit the personal data collected to be accessed or disseminated for reasons other than those for which it was collected or as otherwise provided by law, or (iii) store any personal data for any period longer than that which it is required or for the specific purpose for which the data was collected.

In addition, the provisions of the Labour Act provide that the results of an employee's medical examination must be kept confidential and only disclosed to persons other than the employee upon the order of competent authority.

BUSINESS TRANSFERS

Are employees automatically transferred to a new employer in the event of transfer of a business as a going concern?

According to section 45(1) of the Labour Act, an employment contract shall not be transferred from one employer to another without prior written consent of the employee.

Is consultation or information disclosure required prior to transfer, and if so who must be consulted/receive information, and what disclosures must be made?

This is not provided for in the Labour Act.

Joint and several liability for employers?

This is not provided for in the Labour Act.



Is it possible to change terms and conditions of employment in the context of a business transfer?

The employee's consent is required.

Briefly describe the seriousness of consequences in the event of non-compliance.

This is not specified in the Labour Act.

RETIREMENT

What is the normal retirement age?

In order for an employee to access their full pension, they must have attained the age of 60 years old with at least twenty (20) years of service with one or more employers.

Are any termination benefits payable in the event of retirement?

An old age pension received in terms of the Pension Fund Act. Employees are also entitled to gratuity in terms of section 81 of the Labour Act.

POST-TERMINATION RESTRAINTS

Enforceability of non-compete provisions

Can contractual non-compete provisions be enforced? Is it common for such "restraints" to form part of employment contracts?

Restraint of trade agreements are not adequately provided for in law. However, in terms of the common law, if the restraint is reasonable in nature and scope, it is likely to be enforced.

CONFIDENTIALITY AND TRADE SECRETS

What protections are offered to employers in respect of their confidential information/trade secrets?

The duty of good faith and confidence which is an implied term of the contract of employment imposes a duty on employees to keep the information of the employer confidential. In terms of section 76(3)(g), an employee is said to have committed an act of gross misconduct where an employee has breached an obligation to protect and keep secure confidential information of the Employer unless such breach has been obliged by law made or caused by the employer or to protect public interests. Where an employee has breached his/her obligation of confidentiality, an employer may summarily dismiss an employee.



RESTRAINT OF TRADE AGREEMENTS ARE NOT ADEQUATELY PROVIDED FOR IN LAW.



SWAZILAND

Official language(s):

English, Swati

Population (approx.):

1.1m

Unemployment rate (2018):

25%

Name of court for labour matters:

Industrial Court

Are pre-employment checks permissible?

Yes

Dismissal for misconduct: is there a requirement for procedural and substantive fairness?

Yes

Immigration: must foreign employees obtain a work visa?

Yes





BACKGROUND

Applicable legislation

- The Employment Act, No 99 of 1980
- Employment (Amendment) Act, No 11 of 1981
- Employment (Amendment) Act, No 5 of 1997
- Industrial Relations Act of 2000
- Provident Fund Order, No 23 of 1974

Regulatory rating

 *Heavily regulated.*



HIRING DECISIONS

Pre-hire checks

May employers conduct pre-hire checks?

This is not prohibited in the Employment Act and is conducted by some employers in the country.

Hiring options

What hiring options are available to employers?

Hiring options include:

- contracts which are predominantly performed in Swaziland;
- contracts which are predominantly performed outside of Swaziland or Foreign Contracts of Employment ("FCE");
- non-standard employment;
- fixed-term contracts of employment; and
- employment services.

Immigration

Do foreign employees require permits to work and which visas may be obtained to allow foreigners to work?

When applying for a work permit, the applicant will receive a dated receipt to

help track applications; there is currently no application fee. The application is then forwarded to the police to ensure that the applicant has no criminal record. Once police clearance is confirmed, the application goes to the Training and Localisation Committee for approval.

Subsequently, the application goes to the Temporary Residence Permit Committee who renders the final decision. This committee includes officials from the Ministries of Home Affairs, Enterprise and Employment, and Justice. The Ministry of Enterprise and Employment is responsible for judging whether the business is viable and may require a business plan and interview.

Are there any limitations placed on employers' discretion to determine new hires?

The Ministry forwards the application to the police to ensure that the applicant has no criminal record. If so, the applicant cannot be considered.

CONDITIONS OF EMPLOYMENT

Are there any formality requirements attached to employment contracts, eg written format and/or signed?

The Employment Act recognises employment contracts which are either "express or implied". Further, the employer is obliged to provide the employee with a copy of the Employment Form as per s22 and the Second Schedule to the Employment Act. It can therefore be assumed that a contract of employment is required and these contracts can either be concluded in writing or orally. The prescribed format of the Employment Form must record the essential terms and conditions of employment.



THE EMPLOYMENT ACT RECOGNISES EMPLOYMENT CONTRACTS WHICH ARE EITHER "EXPRESS OR IMPLIED".

Probation

Can a probation period be used, and if so, is there a maximum prescribed period of probation?

A probation period can be used and shall not exceed three months except for employees in supervisory, technical or confidential work where the contract of employment shall fix a probation period that can be longer than three months.

Minimum employment rights

Are any employees excluded from minimum employment rights?

The provisions relating to Annual Holidays and sick leave do not apply to outworkers and members of the employer's immediate family who work on the employer's behalf and live in the employer's accommodation.

Is there a minimum wage requirement?

There are currently no formal legal requirements with regards to minimum wages except in terms of Ministerial determinations in certain industries such as mining, construction, security, agriculture and domestic sectors.



GENERAL RATES OF OVERTIME ARE NOT PRESCRIBED BY THE EMPLOYMENT ACT.

What are the standard/maximum working hours? Are there prescribed minimum resting periods during the normal working day/week?

The Employment Form must record the essential terms and conditions of employment, including working hours.

What are the minimum requirements relating to overtime?

General rates of overtime are not prescribed by the Employment Act. However, an employer is to record provisions regarding overtime in the Employment Form. Further, the various decrees, ordinances and other statutory orders may prescribe overtime regulations for a specific sector.

What are the minimum requirements relating to annual leave?

Every employee is entitled to paid holiday leave. After each 12 months of employment with an employer, an employee is entitled to no less than two weeks holiday and shall be paid in respect of such holiday the wages they would have been paid for the time (other than overtime) they would normally have worked during that period.

What are the minimum requirements relating to sick leave?

Section 129(1) of the Employment Act provides that after completion of the first three months of service, an employee is entitled to 14 days sick leave for every 12-month cycle of continuous employment. The employee is entitled to the basic rate of wages on their sick days when the employee's wage is fixed by government order. Alternatively, the employees shall be entitled to be paid their full wages for a sick day. Section 130(1) of the Employment Act provides that an employee must produce a valid medical practitioner's medical note.

What are the minimum requirements relating to parental leave, and does it apply to both parents or only mothers?

Section 102(1) of the Employment Act states that every female employee, who has been in the continuous employment of her employer for 12 months or more shall be entitled to maternity leave. An employee is entitled to 12 weeks' maternity leave of which two weeks' must be on full salary paid by the employer. This period may be extended by a further six weeks

if the employee suffers any illness out of her pregnancy. Section 102(2) of the Employment Act provides that a female employee can only take maternity leave if 24 months have passed since the previous maternity leave was utilised.

A female employee is further entitled to a paid nursing break for at least one hour daily for the first three months after completion of maternity leave.

What are the minimum requirements relating to family responsibility leave (if any)?

According to Section 122(5) of the Employment Act, an employee is entitled to one month's unpaid compassionate leave for every 12 months completed service.

Are employees automatically entitled to bonus payments?

This is not outlined explicitly in the Employment Act and therefore, employees are therefore not automatically entitled thereto. Employers may pay employees a discretionary bonus. This entitlement may also be included in terms of the contract of employment.

Changing terms and conditions of employment

Are employees automatically entitled to periodic increases, alternatively how do the parties normally achieve consensus on increases?

No, this has to be provided for in the contract of employment.

Can employment terms be changed without achieving agreement with the employees?

An employer may amend the terms and conditions of employment on condition that they notify the employee in writing. The employee, however, reserves the right to request the employer to send a copy of the amended Employment Form to the Labour Commissioner.

Are employees commonly represented in their interactions with employers relating to changes to employment terms?

The Labour Commissioner shall examine the changes in the terms of employment contained in the notification. The Industrial Relations Act further regulates the negotiation and conclusion of collective agreement between the employer/ employer's organisation and a trade union/ staff association.

SOCIAL BENEFITS, TAX AND PENSIONS

Workplace injuries

In the event of workplace injury/disease, will employees be entitled to some form of compensation?

Section 74(1) and (2) of the Employment Act provides that an employer must repatriate an employee back to Swaziland, at the employer's expense, if the employee becomes incapacitated, by sickness or accident, during the journey to the place of employment.

Return to work

Are employers obliged to reintegrate workers into the workplace after having recovered from workplace injuries?

This is not provided for in the employment legislation.

Medical aid benefits

Are employers obliged to provide employees with membership to medical aids or other assistance with medical costs outside of the context of workplace-related injury or disease?

Employers are not obliged to provide employees with membership to medical aid or provide medical assistance. However in most cases employees provide this in the contract of employment.

Taxation

What are an employer's obligations in respect of employee income tax, and what are the maximum personal tax rates that are applicable?

All employees who earn income from an employer is obliged to pay income tax at the prescribed rate. The employer, in turn, is required to subtract the prescribed tax amount from the employee's salary and make payment to the Swaziland Revenue Authority.

Other social benefits

What other employee social benefits must the employer either contribute to or deduct from employee contributions?

Section 22 coupled with the Second Schedule of the Employment Act provide that the Employment Form must record the essential terms and conditions of employment, including pension's scheme/ fund particulars.

An employer may deduct from the wages due to an employee any amount due by the employer in respect of a contribution to the Swaziland National Provident Fund in line with s56(1)(b) of the Employment Act. An employer who employs more than five employees is obliged to register their company with the Labour Commissioner and will be liable to make the prescribe contribution to the provident fund.



DATA PRIVACY

What data privacy obligations (if any) rest on employers in respect of their employees?

There are no statutory requirements or limitations for the collection and usage of an employee's personal information. Broadly, it may be argued that personal data should only be used for the purposes for which it was collected, or for purposes that are directly related to those purposes.

BUSINESS TRANSFERS

Are employees automatically transferred to a new employer in the event of transfer of a business as a going concern?

Sale, merger or take-over results in the termination of the contracts of employment between the corporation and its employees. Section 33bis(1) of the Employment Act provides that an employer must pay all salary dues and benefits to its employees before selling the business or prior to a takeover.

Is consultation or information disclosure required prior to transfer, and if so who must be consulted/receive information, and what disclosures must be made?

No statutory protection exists for employees in the event of a transfer of a business as a going concern. Instead, the common law position prevails.

Joint and several liability for employers?

No statutory protection exists for employees in the event of a transfer of a business as a going concern. Instead, the common law position prevails.

Is it possible to change terms and conditions of employment in the context of a business transfer?

No statutory protection exists for employees in the event of a transfer of a business as a going concern. Instead, the common law position prevails.

What are the consequences in the event of non-compliance?

No statutory protection exists for employees in the event of a transfer of a business as a going concern. Instead, the common law position prevails.



NO STATUTORY PROTECTION EXISTS FOR EMPLOYEES IN THE EVENT OF A TRANSFER OF A BUSINESS AS A GOING CONCERN.

TERMINATION OF EMPLOYMENT

What are the statutory obligations and procedures for terminating a contract of employment?

Section 33(1) of the Employment Act provides that either party may terminate the employment contract on notice to the other party provided that the notice period is:

- one week, if the employee has been employed for four months or less;
- two days for every month continues employment, if the employee has been employed for more than three months but not more than one year; and
- one month and an additional four days for every month of continues employment after the first year of employment, if the employee has been employed for more than one year.



THE EMPLOYEE CAN FILE A COMPLAINT WITH THE LABOUR COMMISSIONER WHO MUST SEEK TO SETTLE THE COMPLAINT WITHIN 21 DAYS.

Termination for misconduct

What fair process requirements exist?

Section 33(1) provides that the minimum notice of termination of employment an employer may give an employee, who has completed their probationary period of employment, and who has been continuously employed by that employer for more than one month, shall be:

- a) if the period of continuous employment is less than three months, one week;
- b) if the period of continuous employment is between three months and 12 months, two days for each completed month of continuous employment up to and including the twelfth month; or
- c) if the period of continuous employment is more than 12 months, one month and an additional four days for each completed year of continuous employment after the first year of such employment.

What substantive fairness requirements exist?

Section 33(8) of the Employment Act states that an employee shall not be dismissed without notice unless the reasons for their dismissal are such as to warrant the immediate cessation of the employer/employee relationship and where the employer cannot be expected to take any other course.

Further, if an employee is dismissed due to poor conduct, they can only be dismissed after they has been given a warning for previous poor performance.

What are the dispute resolution mechanisms?

The employee can file a complaint with the Labour Commissioner who must seek to settle the complaint within 21 days. If the Labour Commissioner fails to settle the dispute, they can refer the matter to adjudication to the Industrial Court. This is provided for in s41(3) of the Employment Act.

What remedies are available to employees?

Section 16(1) of the Industrial Act provides the following remedies:

- reinstatement
- re-engagement
- compensation

The court shall require reinstatement or reengagement for unfair dismissal unless the employee does not wish for this to happen for the reasons that the continued employment relationship would be intolerable, it is not reasonably practicable or the dismissal was only unfair because it did not follow fair procedure but was nonetheless substantively fair.

Is third party approval for termination/termination documents required?

No.

Termination for incapacity

What fair process requirements exist?

After an employee is certified by a registered medical practitioner the notice period above apply:

- if the period of continuous employment is less than three months, one week;
- if the period of continuous employment is between three months and 12 months, two days for each completed month of continuous employment up to and including the twelfth month; or
- if the period of continuous employment is more than 12 months, one month and an additional four days for each completed year of continuous employment after the first year of such employment.

What substantive fairness requirements exist?

Section 35(3)(e) of the Employment Act provides that the employer must only dismiss for incapacity if there is no suitable alternative employment to offer the employee. In the case where an employee who is sick or injured is replaced, the employer must prove that it was necessary to replace the employee.

In relation to poor work performance, s36(a) of the Employment Act states that an employee can only be dismissed after they has been given a warning for previous poor performance.

What are the dispute resolution mechanisms?

Parties can approach the Labour Commissioner. However, if the Labour Commissioner does not deal with the matter adequately or a party is dissatisfied with the decision, the party may approach the Industrial Court for

adjudication (see ss26(4) and 62(5) of the Employment Act).

What remedies are available to employees?

Section 16(1) of the Industrial Act provides the following remedies:

- reinstatement
- re-employment
- compensation

The court shall require reinstatement or reengagement for unfair dismissal unless the employee does not wish for this to happen for the reasons that the continued employment relationship would be intolerable, it is not reasonably practicable or the dismissal was only unfair because it did not follow fair procedure but was nonetheless substantively fair.

Is third party approval for termination/ termination documents required?

A registered medical practitioner must certify that the employee cannot carry out normal duties.

Termination for operational requirements

What fair process requirements exist?

A redundancy, is defined in s2 of the Employment Act. The Act provides that the following are reasons connected with the operation of the business, including:

- modernisation, mechanisation, or any other change in the method of production which reduces the number of employees necessary;
- the closure of any part or department of the business;
- marketing or financial difficulties; and
- alteration in products or production methods necessitating different skills on the part of employees.

Section 40(2) of the Employment Act provides that where an employer contemplates terminating the contracts of employment of five or more of employees for redundancy, the employer must, at least four weeks before the intended retrenchments are to take place, inform the Labour Commissioner and any trade union.

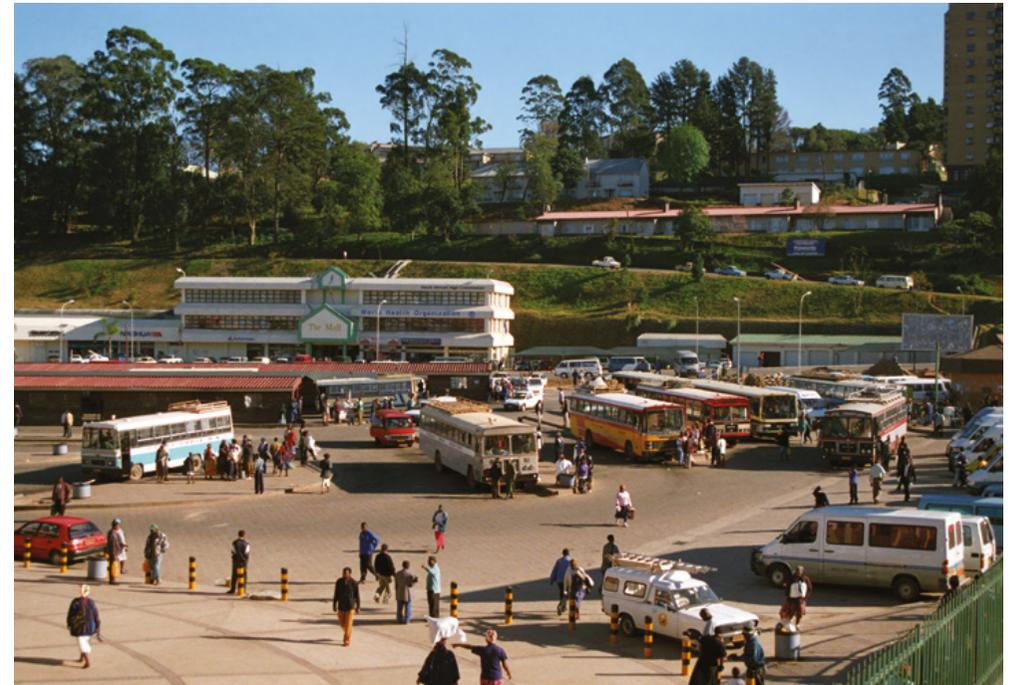
What substantive fairness requirements exist?

Section 40(2) of the Employment Act also provides that an employer must inform the Labour Commissioner and any trade union of intended dismissals, the reasons for the reduction in the workforce,

the number and categories of employees affected, steps taken to minimise the effect of redundancies and the date of the dismissals.

What are the dispute resolution mechanisms?

Alleged unfair dismissals are adjudicated by the office of the Labour Commissioner. If no settlement is reached, the Labour Commissioner must submit a report to the Industrial Court and the matter will be dealt with in accordance with the provisions of the Industrial Relations Act. Accordingly, the parties may proceed to arbitration or mediation.





What remedies are available to employees?

An employer may be guilty of an offence and liable to a fine of E3,000 (Emalangen) if he does not give the prescribed notice.

Is third party approval for termination/ termination documents required?

Four weeks before the intended retrenchments are to take place, the employer is obliged to inform the Labour Commissioner and any trade union of the proposed retrenchments.

What notice periods are applicable?

Four weeks before the intended retrenchments are to take place, the employer is obliged to inform the Labour Commissioner and any trade union of the proposed retrenchments.

Termination benefits

Are any termination benefits payable in the event of a dismissal for misconduct?

All accrued benefits.

Are any termination benefits payable in the event of a dismissal for incapacity?

All accrued benefits.

Are any termination benefits payable in the event of a dismissal for operational requirements?

Employees who are dismissed by reason of redundancy/operational requirements are entitled to a severance payment if they have been employed for 12 consecutive months or more. The severance allowance amounts to 10 working days' wages for each completed year in excess of one year that they have been employed. Further, the employee will be entitled to repayment of gratuity, pension fund or provident contributions.

Are any termination benefits payable in the event of voluntary resignation by an employee?

Accrued benefits.

Are any termination benefits payable in the event of retirement?

All accrued benefits, but due to the recent *Thring v Dunns Swaziland Industrial Court of Appeal* judgment, severance pay or long service pay is not available to retiring employees.

RETIREMENT

What is the normal retirement age?

There is not a mandatory retirement age. A retirement age may be agreed or is determined by a particular position.



**THERE IS NOT
A MANDATORY
RETIREMENT
AGE.**

POST-TERMINATION RESTRAINTS

Enforceability of non-compete provisions

Can contractual non-compete provisions be enforced?

Restrictive covenants in the form of restraint of trade agreements may be enforceable against a new employer. The previous employer may itself, or may request the applicant for employment to, inform a potential new employer that such restraint of trade agreement is binding on the applicant.

Confidentiality and trade secrets

What protections are offered to employers in respect of their confidential information/trade secrets?

In terms of restraint of trade agreement, employers may ensure that they have in place sufficient protection in relation to their confidential information and other protectable interests such as client relationships, to prevent a departing employee from causing significant damage to the employer's business by engaging in inappropriate conduct after termination of employment.



TANZANIA

Official language(s):

Swahili, English

Population (approx.):

59m

Unemployment rate (2018):

10.3%

Name of court for labour matters:

Labour Court

Are pre-employment checks permissible?

Yes

Dismissal for misconduct: is there a requirement for procedural and substantive fairness?

Yes

Immigration: must foreign employees obtain a work visa?

Yes, foreigners are required to apply for a short-term work permit (6 months) or class C work permit (2 years)





BACKGROUND

Applicable legislation

- Employment and Labour Relations Act, No 6 of 2004 (ERLA)
- National Employment Promotion Services Act, No 5 of 1999
- Constitution of the United Republic of Tanzania, 1977
- The Employment and Labour relations (Code of Good Practice) Rules, 2007
- The Non-Citizen (Employment Regulation) Act, 2015
- Public Holidays Ordinance Amendment Act, No 28 of 1966

Immigration Act, No 7 of 1995 and its Regulations of 1997

- Law of Contract Act, Cap 345 of 2002
- Labour Institutions Act, No 7 of 2004
- National Social Security Fund Act, No 28 of 1997
- Occupational Health and Safety Act, No 5 of 2002 (OHSA)
- The Security of Employment Act, No 62 of 1964
- Workers Compensation Act, No 20 of 2008
- Income Tax Act, Cap 332 of 2006

Regulatory rating

✓ *Heavily regulated.*

HIRING DECISIONS

Pre-hire checks

May employers conduct pre-hire checks?

Employers are permitted to conduct pre-employment checks, which includes identity check and residential checks. An employer may also conduct a check on the employment history of a potential employee and this may also include restrictive covenants that may have been imposed on the employee from the previous employment, verification of education, professional qualification and verification of personal references.

A standard criminal check is also required and more enhanced criminal checks may also be conducted in specific industries.

Hiring options

What hiring options are available to employers?

The hiring options available to employers are governed by s14 of the ERLA. Employers may enter into:

- permanent contracts,
- fixed-term contracts (for professionals and managerial ranks); and
- specific task contracts.

Labour broking is also an available option in the private and public sector. Labour broking is heavily regulated by the Tanzania Employment Services Agency (TaESA) which is tasked with providing placement to jobseekers and employers as well as coordinate, provide and monitor cross-border placement services of employees.

Immigration

Do foreign employees require permits to work and which visas may be obtained to allow foreigners to work?

Yes, foreign nationals must obtain either:

- a short-term work permit valid for six months; or
- a permit in terms of s20 of the Immigration Act which is granted for from date of issue with renewals available and the employer must provide the contract of employment, job description, CV and other relevant documentation.

If a foreign employee has not been granted a permit or has had their permit cancelled, there is provision for a right to appeal to the Minister of Labour. The appeal to the Minister of Labour must be lodged with 30 days of the decision.

There is no limitation on the employment of foreign labour but an applicant cannot work pending the issue of the permit.

Are there any limitations placed on employers' discretion to determine new hires?

There are limitations to the employment of non-citizens. Preference must be given to Tanzanian citizens. An employer must ensure equal opportunity in employment. In Tanzania affirmative action is not regarded as discrimination. Employers may not employ children under the age of 14 and prohibitions may be placed on employment of children under the age of 18.

CONDITIONS OF EMPLOYMENT

Are there any formality requirements attached to employment contracts, eg written format and/or signed?

Contracts of employment are required for all employees in Tanzania as the definition of employee in the s4 of the s15(1) of the ERLA provides that an employee is one who has entered into a contract of employment.

There are required formalities attached to employment contracts. Section 15(1) of the ERLA provides that the particulars of the employment relationship must be in writing. Further, s14(2) of the ERLA provides that the employment contract must be in writing if the employee is going to work outside the Republic of Tanzania.

Document retention obligations do exist. Employers must keep the documents for a period of five years after termination of employment.

Probation

Can a probation period be used, and if so, is there a maximum prescribed period or and indicated limitation to the period of probation?

Although the ERLA does not explicitly state the probation period, it does indicate in s35 that, an employee may not bring an unfair termination claim against the employer if employment was less than six months.

Minimum employment rights?

Are any employees excluded from minimum employment rights?

Yes, there are employees excluded from minimum employment rights. They are:

- the Tanzanian Peoples Defence Force;
- the Police Force;
- the Prison Service; and
- the National Service.

Seafarers may also be excluded from certain labour provisions as they are governed by Merchant Shipping Act, No 21 of 2003, Chapter 165 of the Laws of Tanzania.



**EMPLOYERS MUST
KEEP THE DOCUMENTS FOR
A PERIOD OF FIVE YEARS
AFTER TERMINATION.**



ANY EMPLOYEE TAKING SICK LEAVE SHALL ATTAIN A CERTIFICATE FROM A MEDICAL PRACTITIONER.

Is there a minimum wage requirement?

Yes, there is a minimum wage requirement in terms of the ERLA. Section 26(2) of the Act provides that the wage rates shall be determined in line with the table for calculation of comparable wage rates depending on the basis for payment that is due to an employee.

What are the standard/maximum working hours? Are there prescribed minimum resting periods during the normal working day/week?

Employees are required to work six days in any week, 45 hours a week and nine hours in any day. The nine hours are exclusive of a lunch break. However, after a period of five hours employees are entitled to a break of 60 minutes. Employees are prohibited from working for more than 12 hours in a day.

What are the minimum requirements relating to overtime?

Overtime must be in accordance with the contract of employment but cannot be for more than 50 overtime hours in any four-week cycle (s19(3) of the ERLA). When an employee works overtime, s19(5) of the ERLA provides that an employer is obliged to pay the employee not less than 1.5 times the employee's basic wage for any overtime worked. In the event of overtime hours falling on a resting day or a public holiday

then the employee shall be compensated at the rate of double the ordinary rate for every hour worked.

What are the minimum requirements relating to annual leave?

Employees are entitled to annual leave on completion of a year of continuous service with the same employer. An employee is entitled to 28 days paid leave, inclusive of any public holidays that may fall during the period of leave. Employees that work less than six months are not entitled to annual leave. A leave cycle is a period of 12 months' consecutive employment. An employer may determine the timing of leave provided it is taken not later than six months from when it was due to the employee. An employee is prohibited from working during annual leave. An employer may not pay compensation *in lieu* of annual except upon termination.

What are the minimum requirements relating to sick leave?

An employee is entitled to 126 days' sick leave during a leave cycle. During sick leave, payment of wages shall be made as follows:

- for the first 63 days the employee shall be paid full wage; and
- for the second 63 days employees shall be paid half wages.

Any employee taking sick leave shall attain a certificate from a medical practitioner. In line with the OHSA and the Security of Employment Act, an employer may not dismiss an employee during the period of illness or occupational disease.

What are the minimum requirements relating to parental leave, and does it apply to both parents or only mothers?

An employee is entitled to maternity or paternity leave after completion of six months' work from the commencement of the contract of employment. Paternity leave is three days within seven days of the birth of a child, and only if the employee is the father of the child.

There are limitations on pregnant women working at night, for example pregnant women may not work two months before the expected due date at night.

Maternity leave amounts to 84 days' paid maternity leave within a leave cycle or 100 days paid maternity leave if the employee gives birth to more than one child at the same time. The leave cycle in this instance is a period of 36 months. Maternity/paternity leave days include rest days and public holidays.

What are the minimum requirements relating to family responsibility leave (if any)?

Family responsibility leave includes at least four days paid leave for any of the following reasons: the sickness or death of the employee's child, the death of the employee's spouse, parent, grandparent, grandchild or sibling.

Are employees automatically entitled to bonus payments?

No, bonuses are discretionary and may be paid to employees based on the company's business performance and/or individual performance at the end of the year.

Changing terms and conditions of employment

Are employees automatically entitled to periodic increases, alternatively how do the parties normally achieve consensus on increases?

Periodic salary increases are governed by individual company policy and often based on company performance.

Can employment terms be changed without achieving agreement with the employees?

Employment terms may not be unilaterally changed. The employer and employee

must consult on any changes and these changes must be reflected in the contract. Section 15(4) of the ERLA provides the employer can only alter the written particulars of the employment relationship after consulting the employee and thereafter notifying the employee of the changes.

Are employees commonly represented in their interactions with employers relating to changes to employment terms?

Employees may be represented by a union representative when interacting with the employer. However, an employer may revise or change any employment terms after consultation with the employee. However, it is important to note that employee representation is a mandatory in law in instances of redundancies, disciplinary hearings and transfer of an undertaking.

SOCIAL BENEFITS, TAX AND PENSIONS

Workplace injuries

In the event of workplace injury/disease, will employees be entitled to some form of compensation?

Workplace injury and disease is governed by the OHS Act. This Act makes it obligatory for an employer to provide health, safety and welfare to all employees. Additionally, the OHS Act provides for the rehabilitation of any worker that has a workplace injury or disease.

The Workers Compensation Act also provides for the compensation to an employee who has sustained personal injury or death as a result of accidents sustained in the course of employment. Employers are obligated in terms of Workers Compensation Act to contribute to the Workers Compensation Fund. Hence, in the event of a workplace injury, the fund compensates the injured employee.

Return to work

Are employers obliged to reintegrate workers into the workplace after having recovered from workplace injuries?

Employers are obliged to integrate employees after having recovered from a workplace injury. In fact, employers may not terminate an employment contract while an employee is on sick leave except where the illness or injury continues for longer than 126 days and the employee is still unable to return to work. In this instance, the employer may terminate based on medical grounds. However, before doing so the employer must consider alternative work for the injured or ill employee.





THERE IS NO OBLIGATION ON EMPLOYERS TO PROVIDE MEDICAL AID SCHEMES TO ITS WORKFORCE.

Medical aid benefits

Are employers obliged to provide employees with membership to medical aids or other assistance with medical costs outside of the context of workplace-related injury or disease?

There is no obligation on employers to provide medical aid schemes to its workforce. However, some social security funds provide medical benefits to its members with no additional fees required. There is a means test which if satisfied, the injured employee may be afforded treatment in designated hospitals.

Taxation

What are an employer's obligations in respect of employee income tax, and what are the maximum personal tax rates that are applicable?

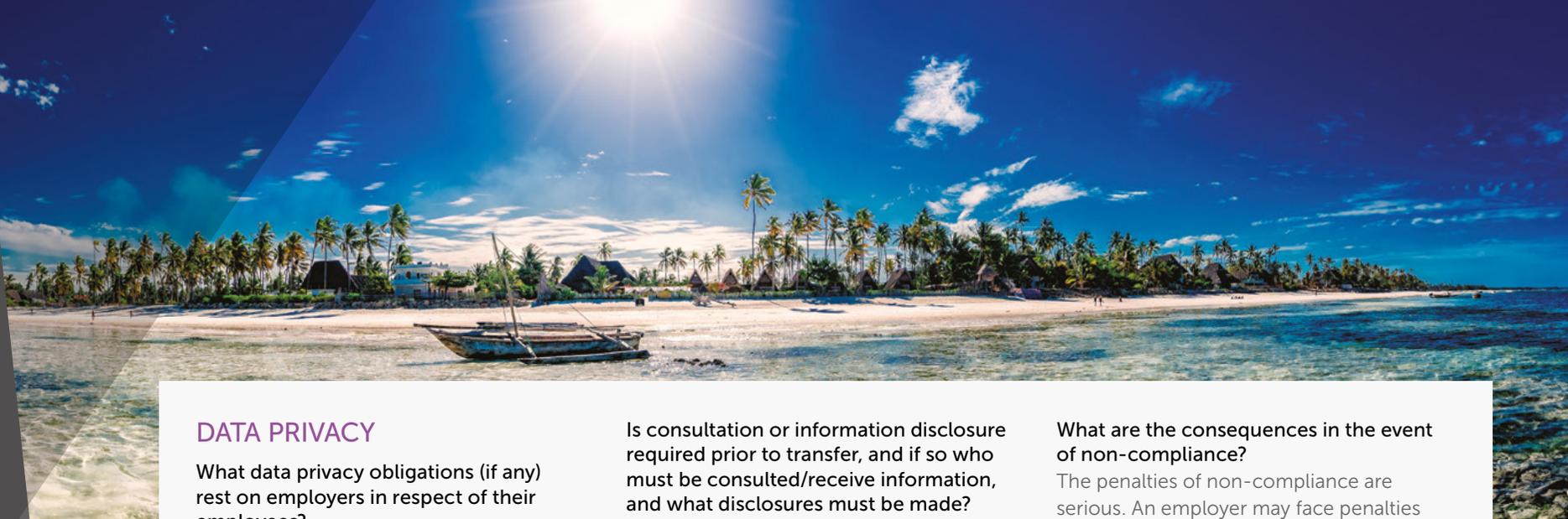
Income tax is payable by individuals residing in Tanzania and the top marginal rate of tax is 30%. For non-residents, it is a flat rate of 15%. Employers are required to withhold Pay As You Earn (PAYE) from employees' chargeable income, at a rate specified in the Income Tax Act.

Accordingly, the employer must provide returns to the Tanzania Revenue Authority, setting its payroll and the tax withheld. Tax returns must be submitted within seven days after the month in which the tax was deducted.

Other social benefits

What other employee social benefits must the employer either contribute to or deduct from employee contributions?

There is the National Social Security Fund Act which provides for full or partial pension. There are no provisions in law for unemployment insurance and benefits. Any employer who employs more than four employees must pay a Skills Development Levy (SDL). The current rate is 6% of the total amount paid to all its employees each month.



DATA PRIVACY

What data privacy obligations (if any) rest on employers in respect of their employees?

Tanzania is currently in the process of developing comprehensive privacy laws. However, art16 of the Constitution of Tanzania does provide for the right to privacy. The ERLA also prohibits the disclosure of information relating to the financial or business affairs of another person if that information was required in the performance of any function or exercise of any power under the ERLA.

BUSINESS TRANSFERS

Are employees automatically transferred to a new employer in the event of transfer of a business as a going concern?

There is no statutory obligation for a new employer to the automatic transfer of employees in the event of transfer of a business as a going concern. A new owner of the transferred business may choose to take on the previous business owner's employees. However, if they do not wish to take any or takes some, those that are not taken will be retrenched in terms of the ERLA.

Is consultation or information disclosure required prior to transfer, and if so who must be consulted/receive information, and what disclosures must be made?

There is no requirement to provide any information or conduct any consultation with employees prior to a transfer. However, if the sale of the business will result in retrenchment, the retrenchment procedure must be followed. In terms of the ERLA, before retrenchment, consultation with employees is required. Further, according to s38(1)(b) of the ERLA, employers are obliged to disclose all relevant information for the purposes of the proper consultation.

Joint and several liability for employers?

There is no legal provision in relation to joint and several liability for employers.

Is it possible to change terms and conditions of employment in the context of a business transfer?

A new employer may change the terms of employment to harmonise these with an existing workforce. The exception would be if a separate agreement is entered into, which would then provide for the new arrangement.

What are the consequences in the event of non-compliance?

The penalties of non-compliance are serious. An employer may face penalties if it fails to comply with the consultation requirements during a retrenchment exercise. The retrenchment shall be declared unlawful and the employer shall be required to pay compensation of an amount equal to at least 12 months.

TERMINATION OF EMPLOYMENT

What are the statutory obligations and procedures for to terminating a contract of employment?

Any party to the employment contract may initiate the termination of the employment contract. A contract of employment may also be terminated automatically in circumstances such as death or loss of business of the employer.

There are four grounds on which an employer may terminate an employee's employment. They are:

- misconduct
- incapacity
- incompatibility
- employers operational requirements/ retrenchment

Termination for misconduct

What fair process requirements exist?

Fair process requirements exist in terms of s37(2)(c) of the ERLA, as well as the Code of Good Practice Rules. Integral to the fair process, is the right of the employee to be afforded a disciplinary hearing, where they may challenge the allegations levelled against him and respond to them adequately.

What substantive fairness requirements may exist?

Employer must prove that the reason for the termination is valid and that the reason is a fair reason which must be related to some form of misconduct by the employee.

What are the dispute resolution mechanisms?

An employee that wishes to challenge their dismissal may refer the matter for arbitration or to the Labour Court.

What remedies are available to employees?

In the event that the arbitrator or Labour Court find that the dismissal was unfair, the court could order reinstatement with back-pay, compensation of not less than 12 months compensation or re-engagement with the employee as the arbitrator of Labour Court may decide.

Is third party approval for termination/ termination documents required?

Not required.

Termination for incapacity

What fair process requirements exist?

Section 37(2)(c) of ERLA provides that employment must be terminated in accordance with fair procedure.

The period of notice shall not be less than:

- seven days, if notice is given in the first month of employment;
- four days, if the employee is employed on a daily or weekly basis; or
- 28 days, if the employee is employed on a monthly basis.

An agreement may provide for a notice period that is longer (but not shorter) than that required above. The onus is on the employer to prove that the reason for the termination is valid and that the reason is a fair reason.

What substantive fairness requirements exist?

The employer before terminating on incapacity must conduct an inquiry/ investigation. This inquiry shall be driven by considerations of: the extent to which the employee is unable to perform work, the extent to which the employee's work

circumstances might be adapted to accommodate the disability or if possible the extent to which the employee's duties might be adapted and the availability of any suitable alternative work or employment.

What are the dispute resolution mechanisms?

Dismissal matters can be referred to arbitration or Labour Court.

What remedies are available to employees?

Should the arbitrator or Labour Court find that the dismissal was unfair they could order reinstatement with back-pay, compensation of not less than 12 months compensation or reengagement with the employee as the arbitrator of Labour Court may decide.

Is third party approval for termination/ termination documents required?

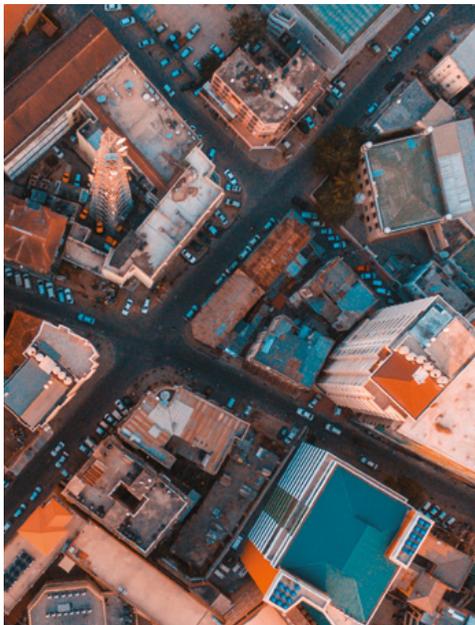
After the incapacity investigation, a meeting must be held and the employee may be represented by a fellow employee or union representative. During the meeting the employer shall provide reasons for the action to be taken and allow the employee to make representation before a final decision is reached.



DISMISSAL MATTERS CAN BE REFERRED TO ARBITRATION OR LABOUR COURT.



THE EMPLOYER MUST GIVE NOTICE OF ANY INTENTION TO RETRENCH AS SOON AS RETRENCHMENT IS CONTEMPLATED.



Termination for operational requirements

What fair process requirements exist?

Fair procedure includes notice of intention to retrench as soon as it is contemplated. In addition to the fair process requirements, the employer must disclose all relevant information on the intended retrenchment for the purpose of proper consultation, consult prior to retrenchment or redundancy on the reasons for the intended retrenchment, any measures to avoid or minimise the intended retrenchment, the method of selection of the employees to be retrenched, the timing of the retrenchments and severance pay in respect of the retrenchments.

What substantive fairness requirements may exist?

Where, in any retrenchment, the reason for the termination is the refusal of an employee to accept new terms and conditions of employment, the employer shall satisfy the Labour Court that the recourse to a lock out to effect the change to terms and conditions was not appropriate in the circumstances.

What are the dispute resolution mechanisms?

If no agreement is reached between the parties on the retrenchment the matter can be referred to mediation.

What remedies are available to employees?

Severance pay discussions must be led. Severance pay amounts to seven days' basic wages for each completed year of continuous service with that employer up to a maximum of ten years. However, the

employee must have worked for 12 consecutive months for the employer.

Is third party approval for termination/ termination documents required?

During these proceedings recognised trade unions need to be consulted.

What notice periods are applicable?

The employer must give notice of any intention to retrench as soon as retrenchment is contemplated.

Termination benefits

Are any termination benefits payable in the event of a dismissal for misconduct?

In terms of s44 of the ERLA, the employer shall pay the employee the following on termination of employment:

- any remuneration for work done before the termination;
- any annual leave pay due to an employee for leave that the employee has not taken;
- any annual leave pay accrued during any incomplete leave cycle any notice pay due; and
- any transport allowance that may be due to the employee in question.

An employee dismissed fairly for misconduct is not entitled to severance pay.

Are any termination benefits payable in the event of a dismissal for incapacity?

No, benefits are payable if the employee refuses to accept alternative employment with the employer or any other employer.

The employee shall be entitled to severance pay which is equal to seven days' basic wages for each completed year of continuous service with that employer

up to a maximum of ten years – provided the employer does not unreasonably refuse to accept alternative employment with that employer or any other employer. Further, the employee shall be entitled to the following:

- any remuneration for work done before the termination;
- any annual leave pay due to an employee for leave that the employee has not taken;
- any annual leave pay accrued during any incomplete leave cycle any notice pay due;
- any severance pay due; and
- any transport allowance that may be due.

Are any termination benefits payable in the event of a dismissal for operational requirements?

The employee shall be entitled to severance pay which is equal to seven days' basic wages for each completed year of continuous service with that employer up to a maximum of 10 years – provided the employer does not unreasonably refuse to accept alternative employment with that employer or any other employer. Further, the employee shall be entitled to the following:

- any remuneration for work done before the termination;
- any annual leave pay due to an employee for leave that the employee has not taken;
- any annual leave pay accrued during any incomplete leave cycle any notice pay due;
- any severance pay due; and
- any transport allowance that may be due.

Are any termination benefits payable in the event of voluntary resignation by an employee?

In terms of s44 the employer shall pay the employee the following:

- any remuneration for work done before the termination;
- any annual leave pay due to an employee for leave that the employee has not taken; and
- any annual leave pay accrued during any incomplete leave cycle any notice pay due.

Are any termination benefits payable in the event of retirement?

Benefits payable in the event of retirement are regulated by the National Social Security Fund which provides for partial (early) or full retirement. An employee is entitled to the full pension if they are at the age of 60, with 15 years of contributions. An early pension is available to workers from the age of 55. If an employee is not entitled to a partial or full pension, they may claim an old-age grant.



RETIREMENT

What is the normal retirement age?

Retirement age is 60. Provision is also made for early retirement at age 55. Retirement at age 60 is compulsory. Termination of employment at retirement is not dismissal.

POST-TERMINATION RESTRAINTS

Enforceability of non-compete provisions

Can contractual non-compete provisions be enforced?

There is no provision in ERLA that deals with to non-compete or restraint of trade

agreements. However, common law provides that contractual non-compete provisions may be enforced provided they meet the test of reasonableness.

It is vital that a non-compete clause is not overly broad to the extent that it totally prevents the employee from obtaining employment elsewhere. Further, the clause should take into consideration factors such as freedom of employment, period of restriction, area of restriction, employers customers and direct competition.

Non-poaching and solicitation of employees is limited to senior employees.

Confidentiality and trade secrets

What protections are offered to employers in respect of their confidential information/trade secrets?

Section 101(1) of the ERLA prohibits the disclosure of confidential information and there are penalties for breach of confidentiality clauses including fines and imprisonment for a term of a year. It is an offence for either the employee to disclose any information relating to the financial or business affairs of the employer.



UGANDA

Official language(s):

English

Population (approx.):

44 501 912

Unemployment rate (2018):

2.1%

Name of court for labour matters:

Industrial Court of Uganda

Are pre-employment checks permissible?

Yes

Dismissal for misconduct: is there a requirement for procedural and substantive fairness?

Yes

Immigration: must foreign employees obtain a work visa?

Yes





BACKGROUND

Applicable legislation

- Citizenship and Immigration Control Act, Cap 66 of the Laws of Uganda (Uganda Citizenship and Immigration Control Act);
- Contracts Act of 2010 (Contracts Act);
- Employment Act, No 6 of 2006 (Employment Act);
- Occupational Health and Safety Act, No 5 of 2006 (Occupational Health and Safety Act);
- National Social Security Fund Act, Chapter 222 of the Laws of Uganda;
- Pensions Act, Chapter 286 of the Laws of Uganda (Pension Act); and
- Workers Compensation Act, Chapter 225 of the Laws of Uganda (Workers Compensation Act).

Regulatory rating

✓ *Heavily regulated.*

HIRING DECISIONS

Can employers conduct pre-employment checks?

Employers are permitted to conduct pre-employment checks. Criminal record checks are the most common of this kind. Further, section 21 of the Occupational Health and Safety Act provides for medical examinations before an employee is engaged in work where they would be exposed to hazards.

What hiring options are available to employers?

There are various hiring options available to employers including:

- Permanent employment;
- Fixed-term employment;
- Part-time employment; and
- Casual employees (maximum of 4 months).

IMMIGRATION

Are there any limitations placed on employers' discretion to determine new hires?

For a foreign employee to work lawfully in Uganda, they must have a valid work permit received in accordance with the Uganda Citizenship and Immigration Control. The Uganda Citizenship and Immigration Control Act provides that a person who is not a citizen of Uganda, shall not be employed or engage in private business unless they are in the possession of a valid entry permit.

CONDITIONS OF EMPLOYMENT

Are there any formal requirements for employment contracts?

Yes, in terms of section 25 of the Employment Act, a contract of service may be orally concluded save for where the Employment Act or any other act requires that the contract be in writing. Oral and written contracts shall have the same force and validity. Where a contract is written in a language which the employee is unable to read or understand as written contracts, the contract must be attested to by the Labour Office. Employees must be provided with written particulars of their employment within twelve (12) weeks of commencing work.

Are probationary periods permitted in Uganda?

Yes, in terms of section 67 of the Employment Act, probationary contracts may not exceed six (6) months, must clearly state that the purpose is for probation and must be in writing. Although probation periods may not exceed six (6) months, it may be extended for a further six (6) months with the agreement of the employee. An employee may not be employed on a probationary contract on more than one occasion. Termination of a probationary contract may be undertaken by either party with at least fourteen (14) days' notice or on payment of seven (7) days' wages *in lieu* of notice.

Minimum employment rights

Are any employees excluded from minimum employment rights?

Yes, these include members of the Uganda People's Defence force (other than civilian employees) and employers and their dependent relatives when dependant relatives are the only employees in a family undertaking, and where the total number of dependent relatives does not exceed five (5).

Is there a minimum wage requirement?

Uganda currently has no minimum wage despite past attempts to establish one. However, the Minimum Wage Bill, 2015 was passed in the Ugandan Parliament in February 2019. The purpose of the Minimum Wage Bill is to provide for the determination of a minimum wage based on the different sectors of the Ugandan economy. The Bill also provides for two different minimum wage determination mechanisms, one that is public and one that is private. The Minimum Wage Bill seeks to correct the current defects in the law with regards to minimum wage determination.

What are the maximum working hours?

The legislated maximum working hours per week is forty-eight (48). The parties may agree that the normal working hours of an employee may exceed forty-eight (48) hours, but such an agreement shall not provide for working hours to exceed ten (10) hours per day or fifty-six (56) hours per week.

If employees are employed in shifts, they may be required to work in excess of ten (10) hours in any one day or forty-eight (48) hours in any one week, provided that the average number of hours worked over a 3-week period does not exceed ten (10) hours a day or fifty-six (56) hours per week.

What are the minimum requirements relating to overtime?

Yes. In the absence of a written agreement to the contrary, work performed in addition to the normal working hours is remunerated at a minimum of 1.5 times the normal hourly rate on ordinary working days and twice the normal hourly rate on gazetted public holidays. The parties may agree to more favourable terms for overtime.

What the weekly rest and public holidays requirements?

An employee is entitled to a days' rest for each cycle of 6 consecutive days worked. The day of rest must be taken on a day which is customary or as agreed between the parties. Employees holding high managerial positions, or persons working in family establishments employing not more than five (5) dependent relatives, may be excluded from rest days by Ministerial decree.

All employees are entitled to double pay on all public holidays or to a day's holiday with full pay at the expense of the employer on some other day that would otherwise be a work day where the employee has worked on a Public Holiday.

What are the minimum requirements relating to annual leave?

An employee who has performed six (6) months' continuous service or who works on a contract of service for sixteen (16) hours a week or more, is entitled to seven (7) days' annual leave for each 4-month period of continuous service. Annual leave is taken as agreed between the parties and the right to forego leave for compensation is not permitted.



FAMILY RESPONSIBILITY LEAVE IS NOT PROVIDED FOR IN THE EMPLOYMENT ACT.

What are the minimum requirements relating to sick leave?

An employee who has worked for a minimum of one (1) month and who is ordinarily employed for at least sixteen (16) hours a week, is entitled to full wages and all benefits stipulated in their employment contract for the first month in which they are unable to work. However, if after the second month the employee is still sick and unable to perform their duties, the employer may terminate the contract of employment in compliance with the provisions of the agreement between the parties at the date of termination.

What are the minimum requirements relating to parental leave?

A female employee is entitled to sixty (60) working days maternity leave on full pay of which a minimum of four (4) weeks shall follow the birth or miscarriage.

A male employee is entitled to four (4) working days paternity leave immediately after the delivery or miscarriage.

What are the minimum requirements relating to family responsibility leave?

Family responsibility leave is not provided for in the Employment Act.

Are employees automatically entitled to bonus payments? If not, is it common that bonuses are paid?

Bonus payments are made at the discretion of the employer.

Changing terms and conditions of employment

Are employees automatically entitled to periodic increases, alternatively how do the parties normally achieve consensus on increases?

This is not an entitlement provided for in law but can be agreed upon between the parties.

Can employment terms be changed without achieving agreement with the employees?

Terms and conditions of employment cannot be changed without the employee's consent. Further, changes cannot be made that are contrary or less favourable to the minimum standards provided for in law

Are employees commonly represented in their interactions with employers relating to changes to employment terms?

Yes.

TERMINATION OF EMPLOYMENT

A contract of employment may be lawfully terminated in the following ways:

- With notice by either party in terms of section 65 of the Employment Act;
- With or without notice by the employee as a consequence of unreasonable conduct on the part of the employer towards the employee;
- Upon expiry, where the contract of employment is for a fixed-term or upon the completion of the specified task;

- Termination upon expiry of the probation period in relation to probationary contracts;
- Dismissal, following the procedure contained in section 66 of the Employment Act;
- Where an employee is incapable of reporting for duty for a period exceed one month; and
- Attainment of the retirement age.

Can an employee be dismissed for misconduct?

Yes. An employee must be provided with written reasons for the termination. In terms of section 69 of the Employment Act, an employer is entitled to summarily dismiss an employee, and the dismissal shall be justified, where an employee has indicated by his or her conduct that they have fundamentally broken their obligations in terms of their contract of employment.

What notice periods are applicable?

Notice periods depends on the employee's length of service. The following notice periods are applicable:

- Two (2) weeks' notice for length of service between six (6) months and a year,
- One (1) months' notice for length of service between one (1) year and five (5) years;
- Two (2) months' notice for contracts between five (5) and ten (10) years; and
- Three (3) months' notice for contracts for over ten (10) years.

Can an employee be dismissed for incapacity?

An employee may be dismissed for incapacity and the employee must be provided with written reasons for the termination.

What notice periods are applicable?

Notice periods depend on the employee's length of service. The following notice periods are applicable:

- Two (2) weeks' notice for length of service between six (6) months and a year,
- One (1) months' notice for length of service between one (1) year and five (5) years;
- Two (2) months' notice for length of service between five (5) and ten (10) years; and
- Three (3) months' notice for length of service for over ten (10) years.

What dispute resolution mechanisms are available to the employee when the employee is dismissed for misconduct or poor work performance?

An employee may refer a dispute to the Labour Office or the Courts within three (3) months of the dismissal.

What remedies are available to the employee when the employee is dismissed for misconduct or poor work performance?

In terms of section 77 of the Employment Act read with section 71 of same, the

courts may order reinstatement or compensation. The court will not award reinstatement where:

- the employee does not wish to be reinstated;
- reinstatement is reasonably impractical;
- the continued employment relationship will be intolerable; or
- where the dismissal was only procedurally unfair.

When awarding compensation, additional compensation may be awarded taking into consideration the employee's length of service, their reasonable expectation of continued employment, opportunities to secure comparable or suitable employment, value of the severance allowance, the expenses reasonably incurred, any contributory conduct, mitigation of loss and other compensation or ex-gratia payments received. The court also has the power to award a severance allowance for unfair dismissals in terms of section 87 of the Employment Act.

Can an employee be dismissed for operational requirements?

Dismissal based on operational requirements are provided for in section 81 of the Employment Act, being the collective dismissal provision. Section 81 of the Employment Act stipulates the procedure to be followed where an employer contemplates the dismissal of more than ten (10) employees over a period of three (3) months for reasons of

operational requirements. A failure to abide by the provisions of section 81 of the Employment Act in the case of collective dismissals constitutes an offence.

There is however no defined procedure for dismissals for operational requirements where the thresholds of section 81 of the Employment Act are not met.

Are any termination benefits payable in the event of a dismissal for operational requirements?

Severance pay may be negotiated between the parties. If the dismissal is found to be unfair, the employee may be entitled to severance pay in terms of section 87 of the Employment Act. Where there is a dispute between the parties with regards to severance pay, severance pay may be determined by a labour officer.

What dispute resolution mechanism are available to the employee when the employee is dismissed for operational requirements?

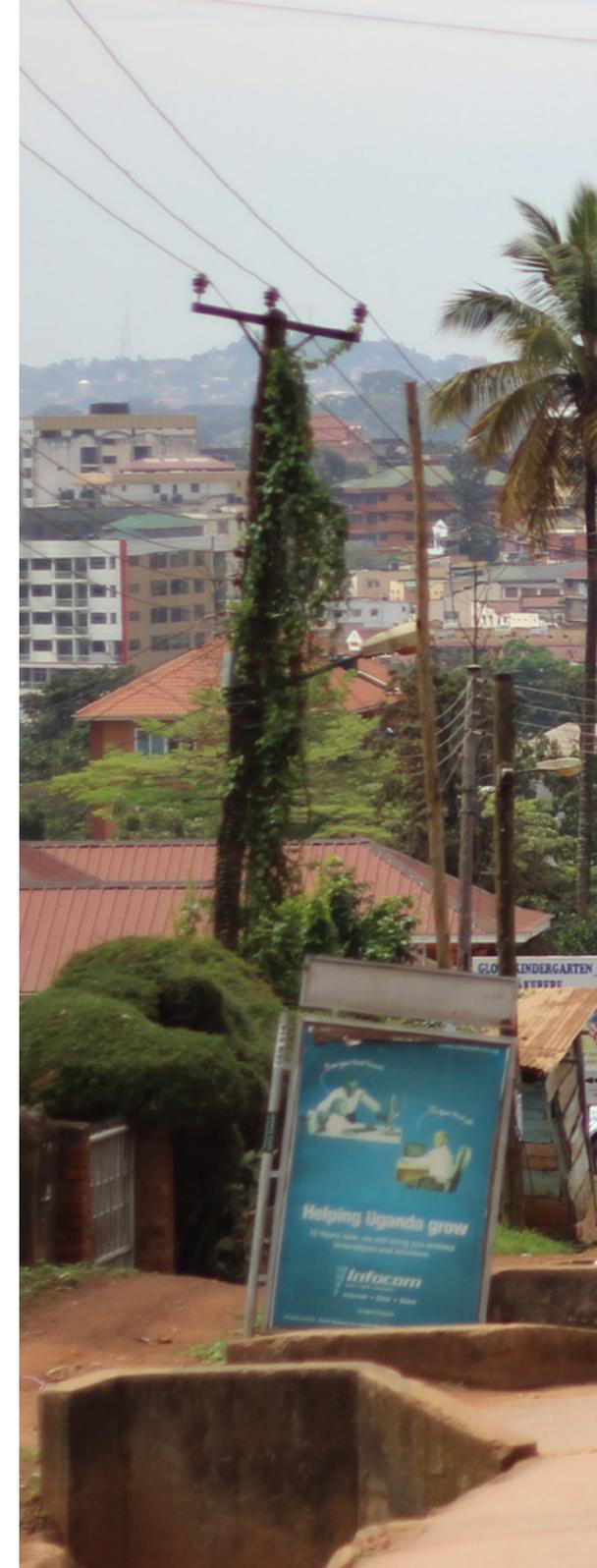
The employee may refer a dispute to the Labour office or the courts within three (3) months.

Employee remedies?

Reinstatement or compensation.

Third party approval for termination/ termination documents?

This is not provided for in the Employment Act.





IF THE DISMISSAL IS FOUND TO BE UNFAIR, THE EMPLOYEE MAY BE ENTITLED TO SEVERANCE PAY IN TERMS OF SECTION 87 OF THE EMPLOYMENT ACT.

SOCIAL BENEFITS, TAX AND PENSIONS

Workplace injuries

In the event of workplace injury/disease, will employees be entitled to some form of compensation?

An employee is entitled to compensation for workplace injury or disease, if the disease or injury was incurred during the course of their employment.

Return to work

Are employers obliged to reintegrate workers into the workplace after having recovered from workplace injuries?

This requirement is not provided for in law.

Medical aid benefits

Are employers obliged to provide employees with membership to medical aids or other assistance with medical costs?

This is not mandatory as it is not provided for in law.

Taxation

What are the employer's obligations in respect of employee income tax?

An employer must file a PAYE return on a monthly basis by the 15th of every month.

Other social benefits

What are other social benefits contributions must be made?

The employer must pay 10% of their employee's salaries to the National Social Security Fund and employees must contribute 5% of their salaries to same.

DATA PRIVACY

What data privacy (if any) obligations rest on employers in respect of their employees?

The Data Protection and Privacy Act, 2019 (Data Protection and Privacy Act) commenced on 1 March 2019. In terms of the provisions of the Data Protection and Privacy Act, all employers must obtain the prior consent of employees prior to processing their personal information.

The Data Protection and Privacy Act also stipulates the manner in which personal information is to be stored as well as who may access the personal data of data subjects as defined in the Data Protection and Privacy Act.



EMPLOYEES ARE ENTITLED TO A PENSION IN THE FORM OF A LUMP SUM FROM THE NATIONAL SOCIAL SECURITY FUND.

BUSINESS TRANSFERS

Are employees automatically transferred to a new employer in the event of transfer of a business as a going concern?

The consent of the employee is required during transfers of business. Where the employee consents, their contracts are automatically transferred including all rights and obligations

Is consultation or information disclosure required prior to transfer, and if so who must be consulted/receive information, and what disclosures must be made?

This is not explicitly outlined in the legislation.

Joint and several liability for employers?

This is not explicitly outlined in the legislation.

Is it possible to change terms and conditions of employment in the context of a business transfer?

It is not possible unless the employee consents.

Briefly describe the seriousness of consequences in the event of non-compliance

Any dismissals connected to the transfer of business would be unfair unless for an economic, technical or organisational reason and an employee would be entitled to severance pay in terms of the provisions of section 87 of the Employment Act.

In addition, if an employee transfers to a new employer without a transfer of business, in the absence of a written agreement between the employee and

the new employer upon transfer, terminal benefits must be paid to the employee within two (2) months of the transfer. Terminal benefits include untaken leave and/or overtime, a certificate of service and any other contractual benefit to which an employee was entitled in terms of their old contract of employment.

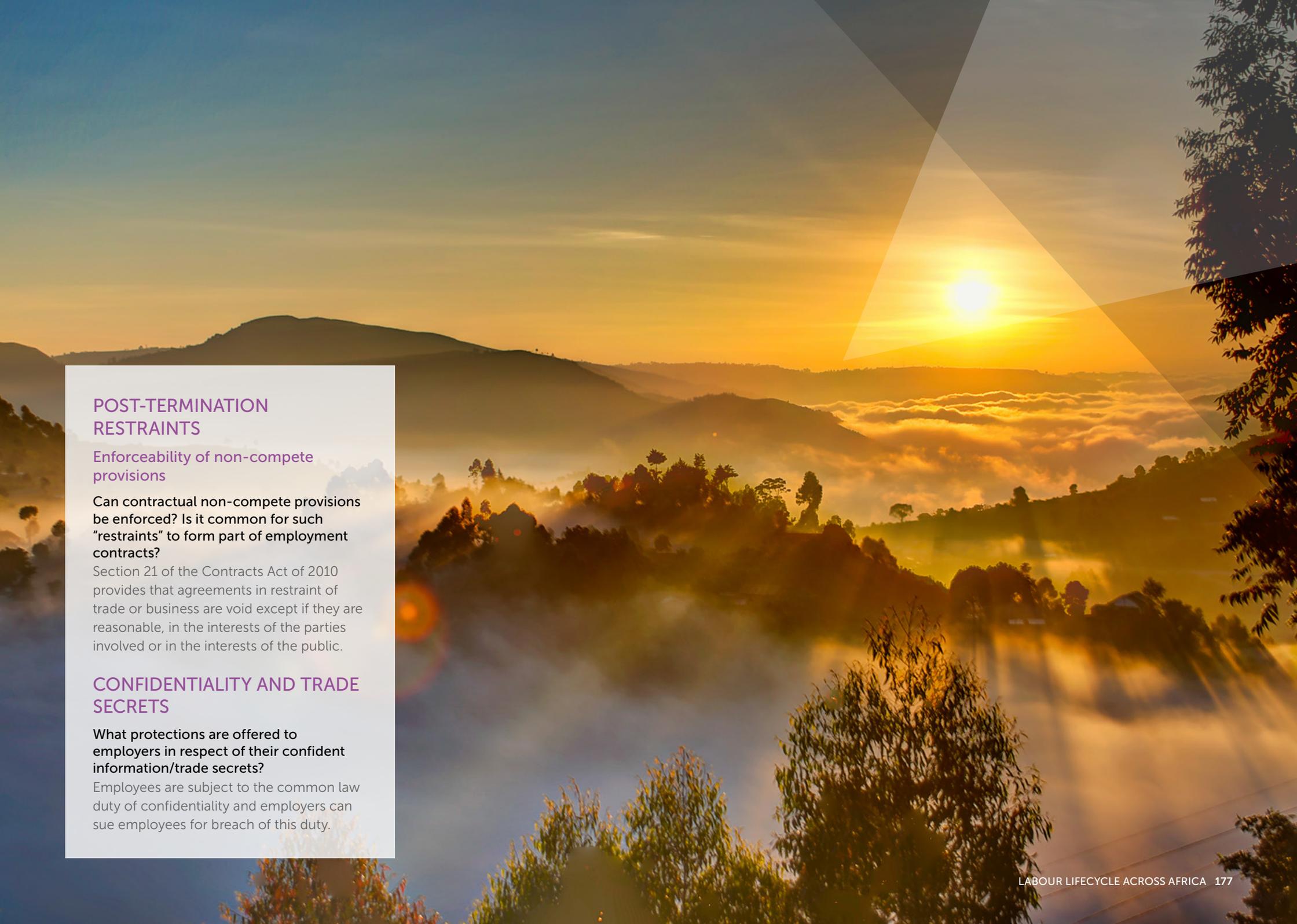
RETIREMENT

What is the normal retirement age?

55 years old.

Are any termination benefits payable in the event of retirement?

Employees are entitled to a pension in the form of a lump sum from the National Social Security Fund.



POST-TERMINATION RESTRAINTS

Enforceability of non-compete provisions

Can contractual non-compete provisions be enforced? Is it common for such “restraints” to form part of employment contracts?

Section 21 of the Contracts Act of 2010 provides that agreements in restraint of trade or business are void except if they are reasonable, in the interests of the parties involved or in the interests of the public.

CONFIDENTIALITY AND TRADE SECRETS

What protections are offered to employers in respect of their confidential information/trade secrets?

Employees are subject to the common law duty of confidentiality and employers can sue employees for breach of this duty.



ZAMBIA

Official language(s):

English

Population (approx.):

17 943 740

Unemployment rate (2018):

7.79%

Name of court for labour matters:

High Court
(Industrial Relations Division)

Are pre-employment checks permissible?

Yes

Dismissal for misconduct: is there a requirement for procedural and substantive fairness?

Yes

Immigration: must foreign employees obtain a work visa?

Yes



BACKGROUND

Applicable legislation

- Competition and Consumer Protection Act, No 24 of 2010;
- Workers Compensation Act, Chapter 271 (Workers Compensation Act)
- The Employment Code Act, No 3 of 2019 (Employment Code);
- The Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia;
- The Ministerial Orders made pursuant to the Minimum Wage and Conditions of Employment Act, Chapter 276 of the Laws of Zambia (now repealed);
- The National Health Insurance Act, No 2 of 2018; and
- The National Pension Scheme Act, Chapter 256 of the Laws of Zambia.

Regulatory rating

✓ *Heavily regulated.*



AN EMPLOYER MAY NOT CONDUCT PRE-HIRE CHECKS TO ASCERTAIN THE HIV/AIDS STATUS OF AN EMPLOYEE.



HIRING DECISIONS

Can employers conduct pre-employment checks?

Pre hire checks are permissible, including medical examinations to assess the employee's fitness to work as well as criminal record checks. However, an employer may not conduct pre-hire checks to ascertain the HIV/AIDS status of an employee.

What hiring options are available to employers?

In terms of section 19 of the Employment Code, a contract of employment may take one of the following forms:

- A permanent contract;
- A contract for a long-term;

- A contract for a specific task; and
- A contract for a probationary period not exceeding three (3) months.

IMMIGRATION

Are there immigration requirements?

Any foreign employee intending on working in Zambia for more than six (6) months must obtain an employment permit.

Are there any limitations placed on an employers' discretion to determine new hires?

Yes. Employers can only hire expatriate employees if they have a special skill as determined by the Skills Advisory Committee.

CONDITIONS OF EMPLOYMENT

Are there any formal requirements for employment contracts?

Zambia recognises both oral and written contracts of employment. In terms of section 18 of the Employment Code, all employers must keep a record of the particulars of an oral contract of employment in the form set out in Schedule 1 of the Employment Code. In terms of section 22 of the Employment Code, where an employer engages an employee for a period of six (6) months or more or for a number of working days equivalent to six (6) months or more within a year, the contract of employment must be in writing.

Are probationary periods permitted in Zambia?

Yes. Probationary contracts may be concluded for a period of three (3) months to assess the suitability of an employee. A probationary contract may be extended for a further period not exceeding three (3) months.

Minimum employment rights

Are any employees excluded from minimum employment rights?

The Employment Code does not apply to persons in the Defence force, members of the Zambian Police Services, members of the Zambian Correctional Services and persons in the Zambia Security Intelligence Service.

Is there a minimum wage requirement?

Zambia's Minimum wage is regulated by the Ministerial Orders made pursuant to the now repealed Minimum Wages and Conditions of Services Act, Cap 276. These Orders apply only to specified groups of employees or 'protected workers' as decided by the Minister responsible for Labour through issuance of Statutory Orders.

What are the maximum working hours?

An employee may not work more than forty-eight (48) hours in a week and is entitled to a one-hour meal break and either two 10-minute health breaks or one 20-minute health break per day.



**ZAMBIA
RECOGNISES
BOTH ORAL
AND WRITTEN
CONTRACTS OF
EMPLOYMENT.**



AN EMPLOYEE IS ENTITLED TO SICK LEAVE UPON PRODUCING A MEDICAL CERTIFICATE FROM A HEALTH CARE PRACTITIONER

What are the minimum requirements relating to overtime?

Any employee who works in excess of forty-eight (48) hours in a week shall be paid at one and a half times their hourly rate and those who work on Sundays and public holidays should be paid at least double their hourly rate. It is important to note that in order for an employee to be entitled to overtime, an employee must perform his work outside the scheduled hours and such work must be recognised and approved by the employer as being outside the scheduled working hours.

What are the minimum requirements relating to annual leave and public holidays?

An employee, other than a temporary or casual employee, who remains in continuous employment with the same employer for a period of twelve (12) consecutive months shall be granted annual leave at the rate of two (2) days per month, per annum.

An employee shall be entitled to full remuneration on all public holidays designated in terms of the Public Holiday Act, Chapter 272, provided that the employee is not absent from work on the day proceeding or the day following the public holiday without the consent of the

employer or without a reasonable excuse for his/her absence. Notwithstanding, where employees are obliged to work on public holidays in terms of a collective agreement, employees will be paid for such work in line with the terms set out in the collective agreement.

What are the minimum requirements relating to sick leave?

In terms of Section 38 of the Employment Code, an employee is entitled to sick leave upon producing a medical certificate from a health care practitioner, where the employee is unable to perform their normal duties due to illness or injury.

Employees on short-term contracts, are entitled to twenty-six (26) days' sick leave at full pay and a further twenty-six (26) days' sick leave at half pay. For employees on long-term contracts, an employee is entitled to full pay during the first three (3) months and thereafter, half pay for a further three (3) months in any twelve (12) month cycle.

Any salaries received during sick leave shall be reduced where the employee also receives compensation from the Workers' Compensation Control Fund Board. The employer may, on the recommendation of a medical doctor, discharge an employee

after six (6) months of the date of the illness or injury and pay the employee a lumpsum of not less than three (3) months' basic pay for each completed year of service.

What are the minimum requirements relating to parental leave?

Female employees are entitled to a minimum of fourteen (14) weeks maternity leave of which, six (6) weeks must be taken immediately after the delivery. In the event of multiple births, a female employee is entitled to a further four (4) weeks maternity leave.

Male employees are entitled to paternity leave of not less than five (5) continuous days if the employee is the father of the child and has submitted to the employer a birth record of the child. Paternity leave must be taken within seven (7) days of the birth of a child

What are the minimum requirements relating to family responsibility leave?

In terms of section 39 of the Employment Code, an employee who has worked for an employer for six (6) months or more, may, on the production of a medical certificate, be granted paid family responsibility leave for a period not exceeding seven (7) days per annum for the purposes of nursing

a sick spouse, child or dependant. An employee is entitled to three (3) paid leave days per annum to cover responsibilities related to the care, health or education of an employees child, spouse or dependant.

Further, in terms of section 40 of the Employment Code, an employee is entitled to twelve (12) days paid compassionate leave per annum where an employee has either lost a spouse, parent, child or dependant or has a justifiable compassionate ground. The Employment Code does not specify what is meant by a justifiable compassionate ground.

Are employees automatically entitled to bonus payments? If not, is it common that bonuses are paid?

The payment of a bonus is not mandatory in terms of the Employment Code and employers may agree to pay employees bonuses. However, employees on long term contracts are entitled to a gratuity payment of not less than 25% of an employee's basic pay at the end of their contract of employment. If the contract is terminated prior to the expiration of the fixed-term, the employee is entitled to receive gratuity on a prorated basis.

Changing terms and conditions of employment

Can employment terms be changed without achieving agreement with the employees?

This is not permitted, an employee's consent is required before altering the terms and conditions of their employment. If the employer alters terms of the contract without consent, this amounts to a redundancy and the affected employee is entitled to two (2) months' pay for each year worked. In addition, where terms and conditions of employment are amended, the written contract of employment must be updated to reflect the changes.

Are employees commonly represented in their interactions with employers relating to changes to employment terms?

Yes.



WORKERS ARE ENTITLED TO COMPENSATION FROM THE WORKERS' COMPENSATION CONTROL BOARD.

SOCIAL BENEFITS, TAX AND PENSIONS

Workplace injuries

In the event of workplace injury/disease, will employees be entitled to some form of compensation?

Workers are entitled to compensation from the Workers' Compensation Control Board as well as the invalidity pension from the National Pension Scheme Authority. An employee who dies in service is entitled to receive two (2) months' pay for each year worked and a survivor's pension from the National Pension Scheme Authority. In addition, in the event that an employee dies during their service, and before receiving their severance pay, the employer shall pay the employees severance pay into the deceased estate of the employee.

Return to work

Are employers obliged to reintegrate workers into the workplace after having recovered from workplace injuries?

This is not expressly provided for in law.

Medical aid benefits

Are employers obliged to provide employees with membership to medical aids or other assistance with medical costs?

All employees are required to be members of the National Health Insurance Scheme which receives contributions from both employers and employees. Members of the National Health Insurance Scheme who are in possession of a valid membership card are entitled to access insured health care from accredited health care providers anywhere in Zambia and to receive benefits in terms of the scheme.

Further, in terms of section 94 of the Employment Code, it is mandatory for employers to provide medical attention, medicines and where necessary, transport to a health facility during the illness of an employee. This requirement gives employees the right to medical cover from their employers either in their contract of employment, collective agreement or conditions of service of the undertaking.

In addition, the Workers Compensation Act provides that an employer or the Workers Compensation Fund shall defray expenses incurred by an employee as a result of an accident arising in the course of employment. These rights accrue to employees together with the right an employee has to access health care from an accredited health care provider in Zambia.





BUSINESS TRANSFERS

Are employees automatically transferred to a new employer in the event of transfer of a business as a going concern?

In terms of section 28 (1) of the Employment Code, an employer shall not transfer any rights arising from a contract of employment to another employer without the following:

- the consent of the employee;
- notifying employee representatives of the proposed transfer; and
- the endorsement of the particulars of the transfer by an authorised officer.

A transfer of rights in contravention of section 28(1) of the Employment Code is void. Where an employee refuses to be transferred in terms of section 28 of the Employment Code, the contract of employment terminates and the employee is entitled to severance pay.

TERMINATION OF EMPLOYMENT

Briefly describe whether any statutory obligations exist to effect dismissals in a fair manner, as well as whether this obligation coexists with common law obligations to act lawfully when affecting dismissals? Is compliance with lawfulness requirements (i.e. compliance with conjugal principles) sufficient in the normal course, or will every dismissal be subject to fairness?

According to Section 52(2) of the Employment Code, the employer must give a reason for terminating a written contract of employment, and such reasons must be valid. For the dismissal to be fair, the reason must be related to the conduct or capacity of the employee or to the operational requirements of the employer. Should an employer fail to comply with these limitations and requirements, an employer may be liable for damages. An employer may not terminate the contract of employment of an employee for reasons related to their conduct or their performance without granting the employee an opportunity to be heard.

What notice periods are applicable for a dismissal?

An employee whose contract is being terminated is entitled to a notice period or payment *in lieu* of notice unless the misconduct of the employee is of such a nature that it would be unreasonable to require the employer to continue the employment relationship.

Where a contract of employment is silent on the notice period, the following notice periods will apply:

- Twenty-four (24) hours for a contract of employment not exceeding one (1) month; or
- Fourteen (14) days for a contract of employment exceeding a month but not more than three (3) months; or
- Thirty (30) days for contracts of employment exceeding three (3) months.

Where the contract of employment is for a period exceeding six (6) months, the notice of termination must be in writing.



Are any termination benefits payable in the event of a dismissal?

The employee is entitled to all their accrued benefits. Where a long-term contract of employment is terminated, the employee shall be entitled to a gratuity payment.

What are the dispute resolution mechanisms?

Disputes must be referred in writing to the Labour Commissioner or directly to the Industrial Relations Division of the High Court.

What are the employee remedies?

- Compensatory damages;
- Reinstatement;
- Re-employment; or
- Injunction (in certain circumstances).

Can an employee be dismissed for incapacity?

Yes, however an employee must be given an opportunity to make representations where their contract of employment is being terminated for reasons related to their performance.

What notice periods are applicable?

Where a contract of employment is silent on the notice period, the following notice periods will apply:

- Twenty-four (24) hours for a contract of employment not exceeding one (1) month; or
- Fourteen (14) days for a contract of employment exceeding a month but not more than three (3) months; or
- Thirty (30) days for contracts of employment exceeding three (3) months.

Where the contract of employment is for a period exceeding six (6) months, the notice of termination must be in writing.

Can an employee be dismissed for operational requirements?

Yes. Employees may collectively or individually dismiss employees due to re-organisation, transfer of a business, reduction or discontinuance of a business for economic and technological reasons.



Are any termination benefits payable in the event of a dismissal for operational requirements?

Not less than two (2) months basic pay for each year of service, repatriation benefits, any other accrued benefits or other benefits to which the employee may be entitled as compensation for loss of employment. This payment must be paid on the employee's last day of service unless the employer applied for an exemption due to financial incapacity. Where an employer is unable to

make redundancy payments to employees due to financial reasons, an employer may apply to the Labour Commissioner for an exemption.

What are the dispute resolution mechanisms?

In the event of a dispute arising, the employee may refer the matter to the Industrial Relations Division of the High Court.

What are the employee remedies?

Where there is a disguised transfer or continuation of the employer's business the employee shall be entitled to compensatory damages for loss of employment.

Notice requirements

An employer is obliged to grant employees or their representatives not less than thirty (30) days' notice of the impending redundancy and must grant employees or their representatives an opportunity to consult on the measures to be taken to minimise the adverse effects on employees.

In addition, not less than sixty (60) days prior to effecting the termination, the employer must notify an authorised officer of the impending termination by reason of redundancy and submit to that authorised officer the following information:

- The reasons for the terminations;
- The number of employees likely to be affected;
- The period within which the redundancy is to be affected; and
- The nature of the redundancy package.



WHERE A LONG-TERM CONTRACT OF EMPLOYMENT IS TERMINATED, THE EMPLOYEE SHALL BE ENTITLED TO A GRATUITY PAYMENT.





RETIREMENT

What is the normal retirement age?

The retirement age is 60. However, an employee can take early retirement at the age of 55 or late retirement at 65.

Are any termination benefits payable in the event of retirement?

On termination the employer must pay to an employee a long service gratuity equivalent to one month's pay for each year of service, provided the employee worked for at least ten (10) years.

These terminal benefits supplement the pension an employee is entitled to by subscription to the compulsory national pension scheme.

POST-TERMINATION RESTRAINTS

Enforceability of non-compete provisions

Can contractual non-compete provisions be enforced? Is it common for such "restraints" to form part of employment contracts?

The law on restraint of trade in Zambia comes from the common law as well as the landmark case of *J.K Rambai Patel v Mukesh Kumar Patel* (1985) Z.R. 220 (*Patel v Patel*). The Supreme Court in *Patel v Patel* held that restraint of trade clauses are prima facie unenforceable unless they are reasonable with reference to the interests of the parties concerned and the public. The duration of the restraint and the geographical coverage being relevant factors. In this case, the court held that a restraint clause that did not permit the employee to seek employment in the public

sector was unreasonable as the employer's trade secrets were in no way threatened. Further a restraint clause that bars an employee from taking employment in the whole Zambia, (especially an engineer as it was in this case) was too wide to be considered reasonable and would therefore be unenforceable.

According to the Competition and Consumer Protection Act 24 of 2010, any category of agreements, decisions and concerted practices which have as their object the prevention, restriction or distortion of competition to an appreciable extent in Zambia or in any substantial part of it are declared anti-competitive trade practices and are hereby prohibited. Remuneration of anti-competitive trade practices. It therefore follows that any restraint whose sole purpose is to prevent an employee exercising knowledge and skill acquired during the employment is unreasonable and thus contrary to the public interest.

CONFIDENTIALITY AND TRADE SECRETS

What protections are offered to employers in respect of their confidential information/trade secrets?

Zambia's Employment legislation does not make provision for protection of confidential information expressly. However, the employee does have a common law duty of good faith that encompasses treating and maintaining as confidential all information, communications and documents received in his/her capacity as an employee and relating to their duties.

BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

PLEASE NOTE

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

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