Angola

Botswana

Democratic Republic of Congo

Eswatini

Ethiopia

French Congo

Ghana

Kenya

Lesotho

Malawi

Mauritius

Mozambique

Namibia

Nigeria

Rwanda

South Sudan

Tanzania

Uganda

Zambia

Zimbabwe

AFRICA

# LABOUR LAWS IN AFRICA

CDH

# LABOUR LAWS IN AFRICA

## CONTENTS


01 Introduction
02 Angola
16 Botswana
32 Democratic Republic of Congo
48 Eswatini
62 Ethiopia
76 French Congo
86 Ghana
106 Kenya
130 Lesotho
144 Malawi
160 Mauritius
182 Mozambique
198 Namibia
212 Nigeria
232 Rwanda
248 South Sudan
258 Tanzania
274 Uganda
286 Zambia
306 Zimbabwe


**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 bourgeon, so does the demand for employment, infrastructure and services, accelerating the rise of second-tier industries in markets that once focused, almost exclusively, on commodities.

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.

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 20 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.


The publication is updated periodically (and not as and when legal developments occur). This edition reflects the legal position as at January 2026. 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 20 countries within the African continent. Please feel free to contact us if you require information regarding any particular area of law. ©

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 20 key development jurisdictions: Angola, Botswana, Democratic Republic of Congo, Eswatini, Ethiopia, French Congo, Ghana, Kenya, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Nigeria, Rwanda, South Sudan, Tanzania, Uganda, Zambia and Zimbabwe. 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 a catalyst for a more in-depth discussion with our team about your business' African footprint.

# ANGOLA

| | |
|---|---|
| Official language(s): | Portuguese |
| Population (approx.): | **36m** |
| Unemployment rate (2024): | **14%** |
| 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 (Law No. 12/23, of 27 December 2023)
- Collective Bargaining (Law No. 20–A/92)
- Presidential Decree No. 43/17 of 6 March 2017 (Regulations on the Hiring of Expats, as amended by Presidential Decree No. 79/17, of 24 April 2017)
- Presidential Decree No. 227/18 of 27 September 2018 (which approves the Social Security Regulation)
- Presidential Decree No. 299/20 of 23 November 2020 (which approves the Retirement Social Protection Regulation)
- Personal Income Tax Code (approved by Law No. 18/14 of 22 October 2014 and amended by Law No. 28/20 of 22 July 2020 and Law No. 15/23 of 29 December 2023, which approved the Budget for 2024)

### Regulatory rating

*Heavily regulated.*

**António Vicente Marques**
Partner

# AVM Advogados

AVM Advogados was founded in 2003. The firm originally began assisting clients as a full-service law firm operating through its various offices in Africa and Europe with an integrated team of more than 40 lawyers. AVM Advogados has grown from a Luanda-based law firm into a truly international practice.

AVM has offices in Luanda and Cabinda (Angola), Lisbon and Porto (Portugal) and Maputo (Mozambique). It is a full-service law firm with market leading strengths in labour law, energy, financial services, as well as EPCs and PPPs projects.

AVM advises clients on all aspects of international and national transactions and litigation. Our multidisciplinary team allows us to anticipate trends and respond in a streamlined manner to complex business and legal issues.

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## TRENDS

### General

The labour environment in Angola has been undergoing significant changes, as evidenced by the implementation of the New General Labour Law, which brought about several amendments that directly impact day-to-day operations, especially for employers. These changes include: (i) the reinstatement of the rule that employment contracts must be concluded for an indefinite period; (ii) limitations on the regime of fixed-term contracts that existed under Law No. 2/00 of 11 February 2000, and imposing an exceptional and transitional character, meaning that hiring employees for a fixed term is only lawful in situations expressly provided for by law; (iii) the introduction of new principles aimed at valuing work as a fundamental guarantee of sustainability for an entire organisation, and the establishment of a performance evaluation system for employees based on transparent and previously disclosed objectives in a company's internal regulations, among other things. Updates to labour legislation in Angola aim to address existing gaps and better adapt to the country's reality.

### The introduction of artificial intelligence in the workplace

The use of artificial intelligence in the workplace in Angola is beginning to develop, although it is not as widespread or advanced as in other, more developed, countries. However, as technology advances and companies look for ways to increase efficiency and productivity, the adoption of artificial intelligence is expected to gradually increase.

### Data protection and privacy

As part of the new General Labour Law that came into force on 26 March 2024, a chapter expressly addressing personality rights was introduced. This chapter covers freedom of expression and opinion; physical and moral integrity; privacy; protection of personal data; medical tests and examinations; remote surveillance by an employer; and confidentiality of messages and access to information by an employer. These areas are now comprehensively addressed and safeguarded by law.

### Remote working and its implications for the payment of taxes where employees work from another jurisdiction

Angola applies a pure source-based system for individual taxation. That said, individuals receiving work-related income or business and professional income in Angola are only subject to personal income tax (PIT) if the compensation is paid by an Angolan entity or if the respective cost of such income is allocated to an entity with a head office, residence or permanent establishment in Angola. In this case, the taxable employment income derived by residents and non-residents will be subject to PIT at rates set forth in the PIT table, which range between 10% and 25%.

PIT is withheld by the employer under a Pay-As-You-Earn system, and employees are not required to file returns.

In addition, by the end of February of the year following the tax year, employers must file a tax return, indicating the name and personal details of their employees, their remuneration and the corresponding taxes withheld.

# HIRING DECISIONS

## Pre-hire checks

**May employers conduct pre-hire checks?**
With the inclusion of the chapter on personality rights in the New General Labour Law, employers are no longer free to carry out any pre-contractual checks on potential job applicants.

Thus, an employer may not require a candidate for employment or an employee to provide information regarding their private life, health or pregnancy status, except when this is strictly necessary and relevant for assessing their suitability for the performance of the employment contract, or when particular requirements arising from the nature of the professional activity justify it. The employer must always provide these reasons in writing.

With regards to medical tests and examinations, an employer may no longer, for the purposes of admission, require a candidate for employment or an employee to carry out or submit to medical tests or examinations, except when these are for the protection and safety of the employee and third parties, if particular requirements of the activity justify it.

## Hiring options

**What hiring options are available to employers?**
Hiring options include:

- National or foreign resident employee.
- Foreign non-resident or expatriate employee – these employees are required to obtain a work visa from the relevant authorities and their employment is limited, depending on the number of expatriate employees hired by the company.

**Is there a concept of dual employment or deemed employment in Angola? In what instances would this apply?**
In Angola, dual employment is possible as long as the worker does not compromise the duties of exclusivity and non-competition towards the employer, and as long as they do not exceed the legal limits on working hours. For example, an employee could work two part-time jobs, while complying with the limit on working hours laid out by the law.

## Immigration

**Do foreign employees require permits to work and which visas 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.

**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, e.g. written format and/or signed?**
Employment contracts take the form established by the parties, unless the law expressly requires them to be in writing, as is the case with fixed-term contracts and special contracts (e.g. work promise contracts, internship contracts, remote work contracts).

When in written form, employment contracts must comply with legal requirements and contain the following elements:

- Identification and habitual residence of the contracting parties
- Professional classification and job position of the employee
- Place of work
- Normal weekly working hours
- Amount, form and period of payment of wages
- Mention of accessory or supplementary benefits and those paid in kind, with an indication of their values or calculation bases
- Entry into force and duration of the contract
- Place and date of conclusion of the contract
- Signature of both contractors

**Are zero-hour contracts permissible (contracts without a minimum set of working hours or any basic salary undertaking)?**
There is no specific zero-hour contract structure in Angola, but there is an availability regime, which consists of the worker remaining at the employer's disposal, outside the normal working period, inside or outside the workplace, for a certain period of time, in order to meet extraordinary and unforeseen needs.

This regime can only be used in situations specifically provided for by law.

### 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 of 60 days. The parties can agree, in writing, to reduce or exclude the probationary period. The parties can also, in writing, increase the period to 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. A national minimum wage is set according to the specific industry sector. For example, a national minimum wage has been set for commerce and mining, for agriculture and for transport, and 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 working week runs from Monday to Saturday midday.

All employees are entitled to 45 to 90 minutes of breaks 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?**
Overtime work can only be provided when justifiably required, namely in:

- The prevention or elimination of the consequences of any accidents, natural disasters or other force majeure situations.
- The assembly, maintenance, or repair of equipment and facilities whose shutdown causes damage to the company or inconvenience to the community.
- The temporary occurrence of an abnormal volume of work, which does not justify the hiring of an employee on a fixed-term contract basis.
- The replacement of employees who do not show up at the beginning of their respective work period when it coincides with the end of the previous work period.
- The movement, transformation or manufacturing of highly perishable products.
- The performance of preparatory or complementary work that must necessarily be carried out outside the working hours of the workplace.
- The extension of work, up to a limit of 30 minutes after closing time, in establishments for public sale and provision of personal or general interest services, to complete ongoing transactions or services, for settlement, tidying up, and preparing the establishment for the next opening period.

The maximum limits of overtime are: two hours per each normal working day; 40 hours per working month; and 200 hours annually. Any increase of these limits requires prior authorisation from the General Labour Inspectorate through a justified application filed by the employer.

Each hour of overtime work is remunerated with an additional payment, up to a limit of 30 hours per month, corresponding to 50% of the normal hourly rate. Overtime work that exceeds the limits outlined above is remunerated, for each hour, with an additional payment of 75% of the normal hourly rate.

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

**What are the minimum requirements relating to annual leave?**
Employees are entitled to 22 days of paid holiday leave, which is calculated on the employee's base salary.

**What are the minimum requirements relating to sick leave?**
Inability to work due to a sickness is paid for by the employer for a period of up to six months.

**What are the minimum requirements relating to parental leave, and does it apply to both parents or only mothers?**
Maternity leave is provided for by law for a period of 90 days.

Fathers are entitled to one paid day for each child born, as well as supplementary unpaid leave of seven working days, consecutive or interpolated.

In the event of the mother's proven physical or mental incapacity or the mother's death, the father has the right to replace the mother during maternity leave.

**What are the minimum requirements relating to family responsibility leave (if any)?**
Employees are entitled to eight paid family responsibility days per year.

**Are employees automatically entitled to bonus payments?**
Bonuses are paid out in terms of annual vacation allowances, Christmas allowances and family allowances.

**What statutory payments is an employer required to make to the government in relation to employees, including deductions from employees' salaries and employer contributions, such as unemployment insurance to cover periods of unemployment?**

In Angola, employers are obliged to make the following payments to the state in relation to their employees:

- **PIT:** This tax is levied on all remuneration received by employees, including salaries, allowances and other ancillary remuneration. The employer is responsible for withholding the PIT at source and handing it over to the state.
- **Social security contributions:** Employers must contribute to social security, guaranteeing social protection for employees in cases of maternity, disability, retirement and death. The contribution rate is set by law and is compulsory.

The current PIT rates table, which foresees a PIT exemption threshold of AOA 100,000, includes 12 tax brackets with rates ranging from 10% to 25%.

From a social security contributions perspective, the compulsory contribution rates are 3% from the employee and 8% from the employer.

There is currently no government unemployment insurance system in Angola to cover periods of unemployment for employees.

## 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 employee?**

Yes.

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

Yes.

**What are the legal requirements concerning trade unions and worker organisations, including registration obligations, organisational rights and entitlements to represent employees in the workplace?**

The Angolan Union Law includes provisions that regulate trade union activity and the mandatory formalities and procedures for their constitution and acquisition of legal personality. Among these formalities and procedures is that unions need to register their articles of association with the Ministry of Justice and Human Rights, after which the articles of association are published in the official gazette.

In accordance with Angolan Union Law, a trade union can constitute union committees in companies as long as they represent at least 30% of the company's employees. The Union Law and the General Labour Law guarantee employees the right to form and join trade unions to defend their labour interests. The main provisions include:

- Right of association: Employees have the right to organise themselves into trade unions without the need for prior authorisation.
- Representation rights: Trade unions have the right to represent employees in collective bargaining, in the conclusion of collective bargaining agreements, and in the defence of employees' rights and interests before employers and public authorities.

The General Labour Law provides a legal framework for absence from work that is applicable to trade union delegates or members of the employees' representative body (i.e. union committee), within the limits established by law.

Employers' key obligations in relation to trade unions include to:

- Ensure a suitable place for employee meetings whenever requested by the trade union representatives or the union committee.
- Provide a place within the company to display information related to union activity.
- Provide trade union representatives or union committee members with the necessary information for union participation in matters of collective bargaining and labour conflict.
- Consult the trade union on the content of internal policies on certain matters, such as work schedules, remuneration systems, and protection of employees in terms of hygiene, health and safety at work.

## SOCIAL BENEFITS, TAX AND PENSIONS

### Workplace injuries

**In the event of workplace injury/disease, will employees be entitled to some form of compensation?**
If an employee is absent from work due to a confirmed illness, the employer must pay the employee 100% of their salary for the first six months of absence. The employment contract expires if the employee is absent for more than 12 months. A fixed-term employment contract will terminate upon reaching its term, regardless of the employee's health.

The employer must inform the relevant insurance company about the workplace injury/disease. The insurance company will be responsible for providing the appropriate hospital and outpatient assistance and paying the pecuniary benefits determined by law, including the payment of a monthly pension for life, if the employee becomes permanently incapable of working, depending on the respective degree of incapacity, as established by a competent authority.

### Return to work

**Are employers obliged to reintegrate workers into the workplace after they have recovered from workplace injuries?**
If an employee has been temporarily incapacitated by accident or illness, they have a right to return as soon as they are medically authorised to do so.

### 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 are subject to two legal deductions: PIT and social security contributions. The PIT rate depends on how much an employee earns. Angola applies a pure source-based system for individual taxation. That said, individuals receiving work-related income or business and professional income in Angola are only subject to PIT if the compensation is paid by an Angolan entity or if the respective cost of such income is allocated to an entity with a head office, residence or permanent establishment in Angola. In this case, the taxable employment income derived by residents and non-residents will be subject to PIT at rates set forth in the PIT table (these range from 10% to 25%).

PIT is withheld by the employer under a Pay-As-You-Earn system and employees are not required to file returns.

In addition, by the end of February of the year following the tax year, employers must file a tax return indicating the name and personal details of the employees, their remuneration and the corresponding taxes withheld.

**Do employees who work remotely from a foreign jurisdiction and pay taxes in their country of residence require an Angolan work permit to render services to an Angolan entity?**
The legal regime for foreign nationals in Angola establishes various types of visas that may be granted to foreign nationals who intend to come to Angola. The type of visa depends on the reason and period of stay. That said, in cases where the employee does not intend to come to Angola for work reasons, no visa will be required.

### 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% from the employee's gross salary, and the employee 3%.

**ANGOLA HAS UNIVERSAL PRIMARY MEDICAL COVERAGE PROVIDED BY THE GOVERNMENT.**

## Skills development

**What legislative frameworks exist to support workforce skills development, including strategies for upskilling, learnership provisions, financing for skills development, and the regulation of employment services?**

Angola's General Labour Law establishes provisions that encourage the development of employees' skills. These include:

- **Vocational training:** The law encourages the continuous training of employees, with the aim of improving their skills and adapting to the demands of the labour market.
- **Apprenticeship:** There are provisions regulating apprenticeship contracts, allowing employees to acquire practical and theoretical experience in certain professions.

In addition, the Angolan Government has increasingly shown its support for the creation of specific policies and programmes to promote skills development.

## DATA PRIVACY

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

Employers must respect employees' personal rights, including maintaining confidentiality regarding people's private lives. This encompasses aspects such as family life, emotions, health, and political and religious beliefs.

Employers cannot demand information related to a job candidate's private life or health unless strictly necessary and relevant for evaluating their suitability for the job, and provided that justification for doing so is given in writing. Similarly, information about health or pregnancy can only be requested if specific job requirements justify it and justification for doing so is provided in writing.

Candidates or employees who provide personal information have the right to control their data, including accessing it, knowing its purpose and demanding corrections or updates. Computer files and access used by employers for handling personal data are subject to the relevant data protection legislation.

## 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 (i.e. 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 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

### Termination for misconduct

With the exception of situations where an employee is dismissed during their probation period or where a fixed-term contract is not renewed, the employer does not have complete freedom to dismiss the employee, being limited to unilaterally dismissing its employees only on disciplinary grounds or for an objective cause related to the employer itself, such as bankruptcy or insolvency.

**What notice periods are applicable?**

The following disciplinary process is set out:

- An inquiry must be set up prior to the disciplinary procedure, with a duration of no longer than eight days in cases where either the infraction or its perpetrator is not sufficiently determined.
- The employer must determine which of the applicable disciplinary measures to use. These include:
  - Oral reprimand
  - Written reprimand
  - Temporary relegation from category
  - Temporary reduction of salary (may be set at between one and six months, depending on the seriousness of the offence, and the reduction may not exceed 20% of the employee's monthly base salary)
  - Suspension of work with partial loss of pay (may not exceed 30 days for each infraction, and 60 days in each calendar year)
  - Disciplinary dismissal with just cause
- Disciplinary proceedings may not be initiated while an employee is on leave.
- The employee must be given a minimum of five days to consult the disciplinary file and prepare for the disciplinary interview, i.e. this cannot be carried out less than five days from the date of notice to the employee, and no more than 10 working days.
- In the case of an employee who performs the functions of a union representative or employee representative, there is a duty to pronounce a non-binding inclusion of the trade union organisation within the scope of the disciplinary procedure.

**What are the dispute resolution mechanisms?**

In Angola, the mechanisms for resolving labour disputes include the following: direct negotiation between the parties; mediation; conciliation; arbitration; and, if these do not work, the parties can resort to judicial litigation before the Labour Court.

**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

An employee can only be dismissed based on an objective economic reason or a serious breach justifying discipline. Such a breach must have made the employment relationship difficult to continue.

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

**What notice periods are applicable?**
A minimum 30-day period is applicable 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 compensation 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 requirements. When dismissing for operational requirements, the employer must serve an initial redundancy notice to 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 to the employees.

**What are the dispute resolution mechanisms?**
Under the New General Labour Law, 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?**
With the New General Labour Law, the criterion regarding the size of the company was removed. Thus, in general, an employee is entitled to compensation equivalent to their basic salary at the date of termination of the employment contract, multiplied by the number of years of seniority, up to a limit of five, and the amount obtained in this way is increased by 50% of the basic salary multiplied by the number of years of seniority exceeding that limit.

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

**Is there any third-party approval for termination/termination documents?**
A 30-day or 60-day redundancy notice must be served to the workers' representative body for individual redundancy (depending on the type of worker(s)). The notice should include the reasons for termination, the jobs affected and the ability or inability to transfer these workers. The workers' representatives thereafter have seven days to respond.

**Is it permissible to offer employees a voluntary separation package during a redundancy process? Does this undermine the legitimacy of the retrenchment/redundancy process?**
In Angola, offering a voluntary separation package to employees during a dismissal process is legally permissible, provided it complies with local labour laws and regulations. However, it is essential to ensure that the process is transparent and fair, and that employees' rights are protected.

Offering a voluntary separation package does not necessarily undermine the legitimacy of the dismissal process, as long as the following principles are observed:

- **Voluntary consent:** Employees must have the option to freely accept or decline the voluntary separation package, without coercion or undue pressure from the employer.
- **Equity:** The separation package should be offered equitably and consistently to all eligible employees, without discrimination based on protected characteristics such as race, gender, religion or union affiliation.
- **Transparency:** The terms and conditions of the voluntary separation package must be clearly communicated to employees, including the benefits offered, the time frame for acceptance and any consequences associated with refusal.
- **Respect for workers' rights:** The voluntary separation package must not violate employees' labour rights established by Angolan legislation, such as entitlements to compensation, notice periods and other legal protections.
- **Prior consultation:** It is advisable for the employer to consult with employee representatives or unions, where applicable, before implementing any voluntary separation programme, to ensure a fair and transparent approach.

## 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?**
As mentioned above, the new law does away with the criterion of the size of the company, thus establishing that compensation for termination of the employment contract based on the operational requirements corresponds to one salary for each year of seniority, up to five years. Employees with more than five years' seniority will receive 50% for each year exceeding five years.

**How is severance pay calculated?**
See the previous answer.

**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 service.

## RETIREMENT

**What is the normal retirement age?**
The retirement age is 60 for both men and women, and they must have made at least 180 months of social security contributions.

However, women can have their retirement age reduced for each child, up to a maximum of five.

## POST-TERMINATION RESTRAINTS

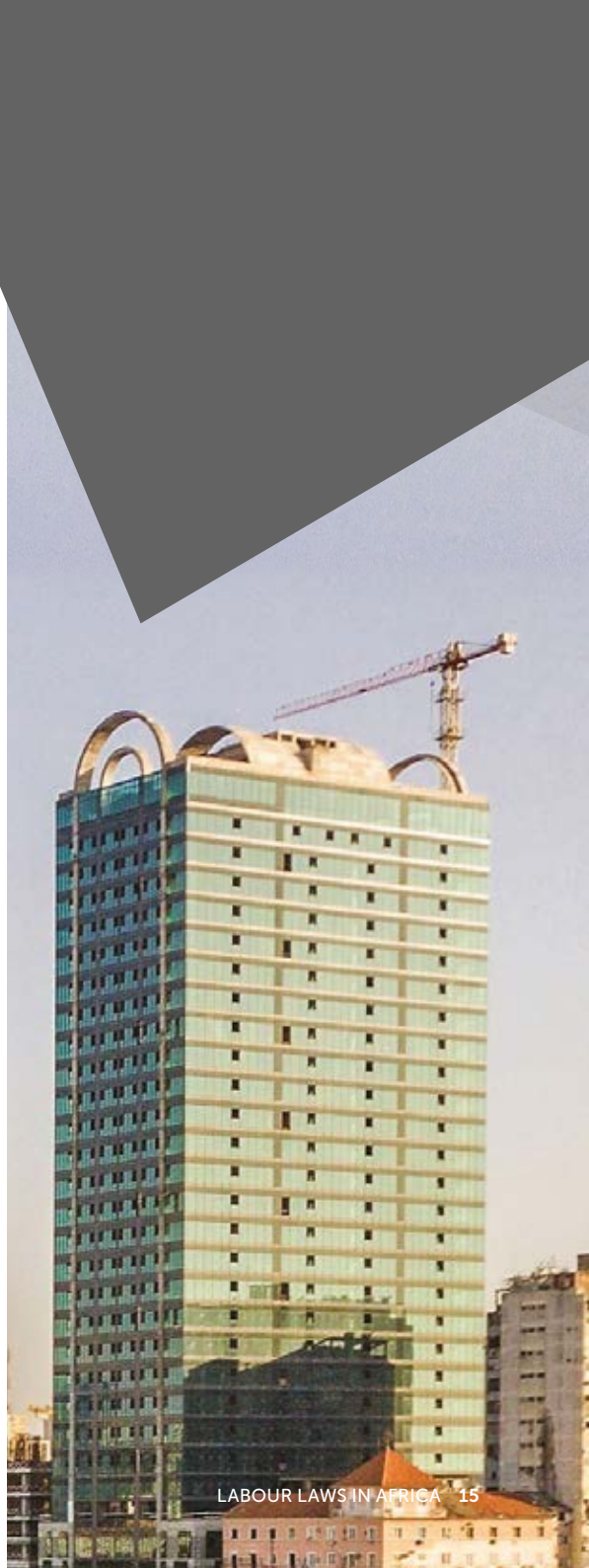
### Enforceability of non-compete provisions

**Can contractual non-compete provisions be enforced?**
Non-compete clauses for a maximum period of three years can be enforced under certain circumstances. The activity or work must be capable of causing damage to the employer and, importantly, non-compete provisions can only be included with the consent of the employee in the contract of employment. Generally, non-compete agreements depend on the payment of compensation to the former employee during the relevant exclusion period. The compensation is determined by agreement.

### Confidentiality and trade secrets

**What protections are offered to employers in respect of their confidential information/trade secrets?**
The New General Labour Law requires employees to maintain confidentiality about the employer's organisational information, production methods and commercial strategies. Additionally, employees are expected to demonstrate loyalty to the employer by refraining from engaging in business with competitors or working on their own behalf during their employment period. Any breach of these obligations is considered a serious disciplinary offence, which may result in the termination of the employment contract with just cause, depending on the disciplinary proceedings. Moreover, the employee may be subject to compensation for damages according to the principles of civil liability.

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



# BOTSWANA

| | |
|---|---|
| Official language(s): | English, Tswana |
| Population (approx.): | **2m** |
| Unemployment rate (2024): | **23.8%** |
| 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 29 of 1982 (Employment Act)
- Employment (Amendment) Act 6 of 2010
- Employment (Amendment) Act 10 of 2010
- Employment of Non-Citizens Act 11 of 1981
- Workers' Compensation Act 23 of 1998 (Workers' Compensation Act)
- Trade Disputes Act 15 of 2004 (Trade Disputes Act)
- Immigration Act 3 of 2011

### Regulatory rating

*Heavily regulated.*

# Armstrongs Attorneys

**Armstrongs is the leading corporate and commercial law firm in Botswana. Armstrongs provides its clients with innovative legal and business solutions of a global standard and is recognised for its pioneering and developmental role in various commercial sectors within Botswana.**

Established in 1983, the firm specialises in all aspects of corporate and commercial law including capital raising, listings, corporate and trade finance, competition law, banking etc. The firm, additionally, has an extremely strong litigation and dispute resolution practice which amongst others extends to corporate litigation, arbitrations, employment disputes, civil engineering and/or construction disputes.

The firm has consistently been rated as a leading law firm by Chambers & Partners.

**Moemedi Tafa**
Partner

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## TRENDS

### General

Botswana's employment landscape is influenced by several factors, including global economic trends, changes in government policies and emergence of new technologies and industries.

Some of the current trends in Botswana's employment landscape include a growing demand for skilled workers in sectors like mining, tourism and financial services; the expansion of the informal economy (economic activities such as street vending, small-scale farming and freelancing, which provide work for many people who are unable to find formal employment); and increased focus on entrepreneurship and small business development.

## The introduction of artificial intelligence in the workplace

Specific information on the adoption of artificial intelligence (AI) in the workplace in Botswana is not extensively documented.

However, some industries in Botswana are exploring how AI can be used to streamline processes, increase efficiency and reduce costs. For instance, some banks and financial institutions in Botswana are using AI for tasks like fraud detection and credit risk analysis.

## Data protection and privacy

The key piece of legislation that exclusively regulates the protection of personal data and the privacy of individuals in relation to their personal data in Botswana is the Data Protection Act 32 of 2018 (Data Protection Act). This act is applicable to a broad spectrum, including employment. However, the act is not yet fully operational, and according to the Data Protection (Amendment) Act (Period of Processing Personal Data Act) Order 2023 that was published by Botswana's Minister for State President on 13 October 2023, will only come into full force and effect, on or around the 13 October 2024.

## Remote working and its implications for the payment of taxes where employees work from another jurisdiction

The tax system in Botswana operates on a territorial basis; income is taxable in Botswana if the source is in Botswana. Income for services performed outside Botswana, such as with remote working, is deemed to have come from a source in Botswana as the services rendered are incidental to employment in Botswana.

## Other trends

Other employment trends in Botswana include:

- An increased demand for jobs in the renewable energy sector as the country moves towards energy sources, such as solar power.
- Growth of the technology sector; more skilled workers needed in areas such as cybersecurity and software development.
- A shift towards more flexible work arrangements, in areas such as freelancing and project-based employment.

## 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 a person's criminal record prior to hiring or confirming their appointment.

### Hiring options

**What hiring options are available to employers?**
There are four types of employment contracts, namely:

- For an unspecified period of time (or permanent employment)
- For a specified period of time/ fixed-term contract
- For a specified piece of work
- For casual employment

**Is there a concept of dual employment or deemed employment in Botswana? In what instances would this apply?**
There is no provision for dual or deemed employment in Botswana's employment laws.

With regards to dual employment, however, parties are not prevented from incorporating a clause or making arrangements for it in their employment contracts.

### Immigration

**Do foreign employees require permits to work and which visas 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 prospective business, 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, e.g. written format and/or signed?**
A "*contract of employment*", under the Employment Act, means an agreement, whether oral or in writing, expressed or implied, whereby one person agrees for a wage or other benefit or both to let their labour to and to perform it under the orders of another person who agrees to hire it. There are, therefore, no formal requirements regarding the manner in which an offer of employment must be made or accepted.

However, the law prescribes that certain special employment contracts, like a special contract in relation to recruitment, be reduced to writing, with the employee indicating their consent either by signing or affixing the impression of their thumb or finger to the contract.

**Are zero-hour contracts permissible (contracts without a minimum set of working hours or any basic salary undertaking)?**
Botswana's employment laws contain no mention of zero-hour contracts. The Employment Act heavily regulates an employee's work hours in order to guarantee sufficient rest periods.

### 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 of Labour and Home Affairs 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 in shift work, they 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 of leave earned in respect of any 12-month period, at least eight days 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.

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

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 six weeks immediately after her pregnancy.

Section 113(4) of the Employment Act provides that should a female employee suffer an illness arising from 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 is at the discretion of the employer. Particulars of an employee's wages in terms of the contract of employment may specify bonus payments.

**What statutory payments is an employer required to make in relation to employees, including deductions from employees' salaries and employer contributions, such as unemployment insurance to cover periods of unemployment?**
Employers in Botswana are legally required to make the following statutory payments or deductions in relation to their employees:

- **Pay-As-You-Earn income tax:** Employers must deduct income tax from employees' earnings in accordance with the Income Tax Act (CAP 52:01) and remit it monthly to the Botswana Unified Revenue Service (BURS). The deduction is based on a progressive tax scale, and the employer acts as the withholding agent.
- **Workers' Compensation Insurance:** Under the Workers' Compensation Act, employers must maintain insurance to cover liability for employee injuries, occupational diseases or death occurring in the course of employment. This ensures that compensation can be paid to employees or their dependants.
- **Medical aid for work-related injury or illness:** Under the Workers' Compensation Act, employers are responsible for covering reasonable medical expenses, including medical costs, assistive devices and transport expenses, when an employee suffers a workplace injury or occupational illness.
- **Leave pay:** Upon termination of employment, the employer is required to pay the employee for any accrued leave in accordance with the Employment Act and the Public Service Act (CAP 26:01) (Public Service Act).
- **Overtime pay:** Overtime must be paid where an eligible employee works beyond normal working hours in accordance with the Employment Act and the Public Service Act.
- **Maternity leave pay:** Under the Employment Act, female employees are entitled to 12 weeks. During this period, the employer is legally required to pay the employee at least 50% of her basic pay.
- **Severance benefit:** Severance benefit, governed by the Employment Act, is a form of end-of-service gratuity payable to employees who have completed at least 60 months (five years) of continuous service with the same employer. If the employment relationship ends before the 60-month period, a pro-rata benefit is payable based on the number of months worked.
- **Training levy:** In terms of the Human Resource Development Council Act (CAP 57:04), employers whose annual turnover exceeds the prescribed threshold are required to pay a training levy. The levy is collected by BURS and contributes to the Human Resource Development Fund, which supports national skills training.

## 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.

**Can employment terms be changed without achieving agreement with the employee?**
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. Collective labour agreements entered into between trade unions and employers often regulate terms and conditions for registered employees.

**What are the legal requirements concerning trade unions and worker organisations, including registration obligations, organisational rights and entitlements to represent employees in the workplace?**
In Botswana, the Trade Unions and Employers' Organisations Act (CAP 48:01) requires all trade unions and employers' organisations to be registered with the Registrar of Trade Unions and Employers' Organisations in order to operate lawfully. Registered trade unions may seek recognition from an employer where they represent at least one-third of the employees in the relevant workplace.

Recognised trade unions, under both the Trade Unions and Employers' Organisations Act and Trade Disputes Act have the right to access the workplace for union activities, collect union dues with employee consent and represent employee members in matters relating to disciplinary proceedings, grievances and termination of employment. The law requires employers to engage recognised unions in good faith on matters affecting employees' terms and conditions of employment.

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

## 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 they have 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 Botswana Employment Act deals with authorized deductions from wages. Section 80(a)(i) provides an employer may deduct from an employee's wages, any tax or rate imposed by law.

**Do employees who work remotely from a foreign jurisdiction and pay taxes in their country of residence, require a Botswana work permit to render services to a Botswana entity?**
No. In Botswana, the need for a work permit is based on whether the non-citizen in question is physically present and performing work within the country's borders, rather than on the location of the employer or payment of taxes.

### 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 payouts.

## Skills Development

**What legislative frameworks exist to support workforce skills development, including strategies for upskilling, learnership provisions, financing for skills development, and the regulation of employment services?**

In Botswana, workforce skills development and the regulation of employment services is supported by the following key legislative frameworks:

- **Human Resource Development Council Act (CAP 57:04):** Establishes the Human Resource Development Council, which is mandated to coordinate national human capital development, promote upskilling strategies and manage the Human Resource Development Fund. The act provides for a levy-grant system that finances skills development by reimbursing employers for approved training costs.
- **Qualifications Authority Act (CAP 47:04):** Establishes the Botswana Qualifications Authority, which regulates education and training providers, accredits learning programmes and maintains the National Credit and Qualifications Framework. This guarantees the quality, relevance and recognition of skills and qualifications, including workplace learning.
- **Employment Act:** Serves as the principal legislation regulating employment in the private sector, including minimum employment standards and the operation of employment services.
- **Public Service Act (CAP 26:01):** Governs the terms and conditions of employment within the public sector, including minimum employment standards and the career progression of public officers.

## Affirmative Action

**What affirmative action obligations do employers have under the law, and what measures must they implement to ensure compliance?**

Botswana's legal framework supports affirmative action in the employment context primarily through the Employment Act, the Trade Disputes Act, the Economic Inclusion Act 26 of 2021 (Economic Inclusion Act) and the Persons with Disability Act 6 of 2024 (Persons with Disability Act).

The Employment Act and Trade Disputes Act prohibit termination on discriminatory grounds such as race, gender, marital status, sexual orientation, health status and disability. They also protect employees from dismissal due to union activity, representation roles or complaints made in good faith.

The Economic Inclusion Act requires employers to implement measures that promote the participation of targeted citizens in employment, management and ownership. It mandates internal transformation strategies and empowers the Economic Empowerment Office to monitor compliance.

The Persons with Disability Act prohibits discrimination based on disability and requires employers to provide reasonable accommodation and ensure equal access to employment opportunities. Employers must take active steps to create inclusive and accessible workplaces, with oversight by the National Disability Council.

## DATA PRIVACY

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

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

The key piece of legislation that exclusively regulates the protection of personal data and the privacy of individuals in relation to their personal data in Botswana is the Data Protection Act.

**AN EMPLOYEE'S PERSONAL DATA SHOULD BE PROCESSED IN A WAY THAT ENSURES ITS SECURITY.**

In terms of the fundamentals of data protection, the following are the basic duties an employer has to its workers in their capacity as data subjects:

- An employee's personal data should be kept in a form that allows for the identification of an employee for no longer than is necessary.
- An employee's personal data shall be collected for specified, explicit and legitimate purposes, and not processed in a way incompatible with those purposes.
- An employee's personal data should be adequate, relevant and limited to what is necessary.
- An employee's personal data should be accurate and, where necessary, be kept up to date,
- An employee's personal data should be processed lawfully, fairly, and transparently.
- An employee's personal data should be processed in a way that ensures its security and protects against unauthorised or unlawful processing, accidental loss, destruction or damage.

## 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 business is taken over, the new employer shall continue to fulfil the obligations under employees' 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 by the business, 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 new employees' consent where it intends modifying their existing 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.

An employee who faces discipline must be given reasonable notice about the time and place the employer intends holding a disciplinary enquiry into the alleged misconduct. Further, the employee must be informed about 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 testifies against them. The employee must further be entitled to give evidence personally and to call their own witnesses.

In the event of being found guilty of misconduct, the employee must be given a further opportunity to put 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 a sanction has been imposed, the employee should be informed of their right to appeal against the 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 compensation is available as a remedy.

**Is third party approval for termination/ termination documents required?**
Where an employee is guilty of serious misconduct, the employer may terminate any contract of employment, without giving notice of its intention to do so.

## 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 the duties that they were originally contracted to perform. 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 clearly communicated to them and they must be given a reasonable time to improve their performance in accordance with the requisite standards.

**What are the dispute resolution mechanisms?**
In terms of section 20 of the Trade Disputes Act, application can be made to the Industrial Court 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 a 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?**
There must be a valid reason for an employer reducing its workforce e.g. economic downturn or restructuring.

The 'first-in-last-out' principle applies to the extent that it is reasonably practicable. What is reasonably practicable is qualified by the employer's obligation 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 Industrial Court can also award just compensation for wrongful retrenchment.

**Is third-party approval for termination/ termination documents required?**
The decision to reduce or reorganise a workforce falls within the ambit of an employer's managerial prerogative. No third-party approval for termination is thus provided for.

**Is it permissible to offer employees a voluntary separation package during a redundancy process? Does this undermine the legitimacy of the retrenchment/redundancy process?**
Nothing in Botswana's employment laws prevents an employer from providing a voluntary separation package to employees during a redundancy process, provided that the requirements for substantive and procedural fairness are met.

## Notice requirements

Once a 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, dismissal for operational requirements, voluntary resignation or retirement?**
Upon the termination of a contract of employment, for whatever reason (including dismissal, resignation, death or retirement), section 27 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 if the employee is entitled to the payment of a pension in respect of the period of employment under the contract.

**How is severance pay calculated?**
The formula for calculating severance pay is as follows:

- One day's basic wages for each completed month of service for the first 60 months.

  = Daily rate x number of months worked

- Two days' basic wages for each additional completed month of service beyond the initial 60 months.

  = 2 (daily rate) x number of months worked after the initial 60 months

Under section 27 of the Employment Act, an employer or employee is entitled to approach the nearest labour officer to determine the amount of any severance benefit if they are dissatisfied with the proposed amount.

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

## 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.

**ENFORCEABILITY OF NON-COMPETE PROVISIONS.**

## 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.): | **111m** |
| Unemployment rate (2024): | **4.4%** |
| 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 Democratic Republic of Congo, 2006
- Labour Code, Loi No. 015/2002 (Labour Code)
- Decree No. 18/017 of 22 May 2018 setting the guaranteed interprofessional minimum wage, minimum family allowances and the equivalent value of housing
- Employee's Compensation Act 23 of 1998
- Decree No. 22/35 of 17 October 2022 establishing the list of occupational diseases
- Law No. 16-009 of 15 July 2016 laying down rules relating to the general social security scheme (Social Security Law)

### Regulatory rating

*Heavily regulated.*

# Liedekerke DRC

From its offices in Kinshasa, Liedekerke DRC, opened in 2015 followed by the creation of Liedekerke Great Lakes in Kigali in 2019, Liedekerke offers its clients unparalleled experience and support in Central Africa, allowing them not only to seize opportunities but also to navigate and overcome the challenges of the African market.

Both offices anchor our presence in the Sub-Saharan region and reflect our commitment to the DRC, Rwanda and Burundi. Liedekerke is very much committed to the region's future.

Our understanding of the local legal systems and cultures enables us to cultivate relationships with skilled law firms in jurisdictions across Africa where we do not have offices, and to select the right local counsel for every assignment.

**Thibaut Hollanders**
Partner

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## TRENDS

### General

Labour law in the DRC is evolving in response to digital transformations, new regulations and modern employment practices. Ordinance-Law No. 23-010 on the Digital Code, adopted in 2023, marks a turning point by providing a framework for artificial intelligence (AI) and the protection of personal data.

AI is increasingly being used in recruitment, employee appraisal and human resources management, but its supervision remains limited. The National Digital Council (NDC) and the DRC Data Protection Authority (DRC DPA) are monitoring its impact on workers to prevent algorithmic discrimination and abusive surveillance.

The protection of personal data is also becoming a priority. Companies must now obtain employees' consent prior to collecting or transferring their data, failing which they may be liable for penalties in terms of the DRC DPA. International data transfers are also subject to strict rules.

International remote work is growing in popularity but raises tax challenges. Employees working from abroad may be subject to double taxation, and employers in the DRC may have to levy 14% business tax on payments abroad.

Finally, the rules on dismissals and compensation also deserve particular attention. Although the Labour Code does not provide for automatic compensation, damages in the event of unfair dismissal is capped at 36 months' salary.

In conclusion, the digitisation of work, data protection and cross-border remote work are shaping the future of labour law in the DRC, these developments require legislative change to provide a better framework for these transformations.

### The introduction of artificial intelligence in the workplace

Ordinance-Law No. 23-010 on the Digital Code, promulgated on 13 March 2023, introduces major regulations that have a direct impact on the world of work, particularly with regard to AI and the protection of personal data. The establishment of the DRC DPA strengthens this legal framework by ensuring compliance with the new rules on the collection, use and security of personal data in the DRC.

#### Current legal framework

The Conseil National du Numérique (CNN) (Article 11) is responsible for overseeing digital ethics, particularly in the areas of AI, big data and robotics. It plays a key role in drafting future regulations in relation to AI in the workplace.

The DRC DPA, meanwhile, is responsible for overseeing the use of AI where it involves the processing of personal data. It has the ability to impose restrictions or sanctions in the event of abuses, particularly in relation to automated recruitment, employee surveillance or the unlawful processing of personal data by AI systems.

#### Challenges and emerging trends

*AI in recruitment and human resources management*

AI's capacity to assist with recruitment and evaluating employee performance is increasing. AI makes it possible to analyse applications, rank profiles and predict candidates' performance. However, the use of AI in recruitment poses risks of algorithmic discrimination. The biases built into the algorithms could disadvantage certain categories of workers, particularly on the grounds of gender, age or ethnic origin.

Faced with these challenges, the DRC DPA could impose transparency obligations on companies that use automated selection systems. These companies will have to justify their decisions and ensure that AI tools do not violate the principles of equal opportunities and non-discrimination.

*Monitoring and tracking employees via AI*

Companies can use AI to monitor employee productivity using technologies such as facial recognition, keystroke analysis or real-time monitoring of work activities. However, these practices raise serious ethical and legal questions. The Digital Code and the DRC DPA will regulate these practices to prevent abuse and ensure that employees' privacy is respected.

The DRC DPA will be able to require employers to inform employees about the surveillance technologies used and to obtain their explicit consent before implementing these systems.

*AI and task automation*

The automation of tasks through AI could lead to job losses in certain sectors, particularly in repetitive jobs such as accounting, customer support and logistics. To limit the negative impact of AI on employment, trade unions and authorities could require companies to put retraining plans in place. These initiatives would enable workers affected by automation to develop new skills and adapt to technological change.

*Regulatory prospects*

In the next few years, new legal directives on AI in the workplace could be adopted under the impetus of the CNN and the APD (Autorité de Protection des Données).

Employers will have to ensure the transparency of decisions taken by AI, particularly in terms of recruitment and dismissal. They could be required to make algorithmic decisions comprehensible and contestable by the employees concerned.

Finally, employment tribunals could play an increasing role in challenging decisions taken solely by algorithms. They will have to ensure that workers' rights are protected amidst the emergence of AI technologies in the workplace.

## Data protection and privacy

The DRC DPA is now the independent body responsible for monitoring and supervising the processing of personal data in the DRC. Its role is to ensure compliance with privacy protection laws and to regulate any action involving the processing of public or private data.

### Employers' obligations with regard to personal data

The Digital Code requires companies to obtain the explicit consent of employees before collecting or processing their personal data. This data must be collected for specific and legitimate purposes, such as human resources management.

Certain sensitive data, such as ethnic origin, political opinions, religious beliefs, sexual orientation and state of health, are strictly protected and may not be collected by employers, except in cases provided for by law.

Employees have the right to access, modify and delete their personal data. The DRC DPA is empowered to order the correction or deletion of data that has been collected or processed in breach of the law.

Employers must also ensure data security to prevent cyber-attacks and unauthorised access. The DRC DPA may require security audits to ensure that companies comply with the legal requirements for the protection of personal data.

### Transfer of employee data abroad

Article 201 of the Digital Code requires that employees' personal data be stored on Congolese territory. A company may only transfer such data to another country if the latter offers an equivalent level of protection.

Companies must obtain authorisation from the DRC DPA before sending data abroad. Employees must be informed of the risks involved and give their informed consent.

Multinationals operating in the DRC must ensure that employee data remains protected in accordance with Congolese legal standards.

### Sanctions and control by the DRC DPA

The DPA has extensive powers to sanction violations of data protection rules. It can impose fines and administrative sanctions, order the rectification or deletion of data and suspend non-compliant processing.

It can also prohibit certain processing of sensitive data, particularly when it involves automated decisions taken by AI systems.

### Conclusion

The DRC DPA and the NDC will play a central role in the application of these new rules. Henceforth, compliance becomes an unavoidable obligation for all companies operating in the DRC, on pain of sanctions and legal proceedings.

## Remote working and its implications for the payment of taxes where employees work from another jurisdiction

The growth in international remote working has led to tax and legal implications for employees working remotely from another country while attached to a company in the DRC. It is essential to understand the tax, contractual and regulatory obligations that apply in these situations.

### Legal framework and work permit requirements

In the DRC, employment legislation applies primarily to workers carrying out an activity on national territory. According to Article 1 of the Labour Code, a worker is subject to local rules only if they physically carry out their employment on Congolese soil.

Consequently, an employee exclusively working remotely from abroad for a company in the DRC does not need a work permit or a Congolese work visa, as they are not considered a local worker within the meaning of the law.

However, if the employee carries out part of their work from the DRC, even by remote working, they may be required to obtain a work visa and DRC company will have to comply with the procedures applicable to the hiring of foreign workers.

### Tax obligations of international remote workers

*Taxation of remote workers*

Income tax generally depends on where the work is performed and on the tax agreements between the DRC and the employee's country of residence.

If the employee already pays tax in their country of residence, in principle they are not liable to pay tax in the DRC.

However, in the absence of a tax treaty between the two countries, the employee risks being subject to double taxation: in the DRC (as the source of the income) and in their country of residence.

Article 83 of Ordinance-Law No. 69-009 of 10 February 1969 stipulates that any remuneration paid by a DRC company to a natural or legal person not established in the DRC is subject to a 14% professional tax. Thus, even if a remote employee pays tax in their country of residence, the Congolese employer may be required to deduct this tax at source and pay it to the DRC tax authorities.

*Taxation of companies employing foreign remote workers*

For companies based in the DRC, employing a remote worker abroad involves potential tax obligations in the employee's country of residence:

- If the DRC company has no physical presence in the employee's country of residence, it is generally not subject to local taxes.
- However, some countries may consider that the remote working of an employee creates a permanent establishment and require local taxes on the income generated.

The company should therefore check the tax regulations of the employee's country of residence to avoid the risk of double taxation or unforeseen tax costs.

## Social security contributions and obligations

Social security contributions are generally payable in the country where the work is physically carried out.

- In the DRC, employers must contribute to the Caisse Nationale de Sécurité Sociale (CNSS) for their employees.
- If an employee works remotely from another country, they may be subject to the local social security system.

If the DRC and the employee's country of residence have signed a social security agreement, this can avoid double contributions and specify which scheme applies.

In the absence of a bilateral agreement, the Congolese employer may be required to contribute to the foreign social security scheme in addition to contributions in the DRC, which could result in additional costs.

## Regulatory implications and precautions for employers

Cross-border remote working is not yet strictly regulated by DRC law, but companies should anticipate their legal and tax obligations to avoid the risk of non-compliance.

Before taking on a remote worker based abroad, employers in the DRC are advised to:

- Check bilateral tax treaties between the DRC and the employee's country of residence to avoid double taxation.
- Determine whether a permanent establishment has been set up in the employee's country of residence, which could give rise to additional tax obligations.
- Clarify applicable social security contributions to ensure that the employer and employee meet their respective obligations.
- Include specific clauses in employment contracts to specify tax and social security obligations and the responsibilities of each party.
- Obtain tax advice to avoid penalties or unforeseen charges due to legislative differences between countries.

## Conclusion

International remote work poses fiscal and regulatory challenges for Congolese employees and employers.

From a legal point of view, an employee working exclusively from abroad for a company in the DRC does not need a work permit or visa. However, if the employee carries out part of their work in DRC territory, they may be required to obtain a work permit and visa.

From a tax point of view, income tax depends on the employee's country of residence, but the company in the DRC may be required to withhold and remit a 14% tax on payments made from abroad. The question of social security contributions must also be taken into account, as the employer may be subject to the social security obligations of the employee's country of residence.

In a context where remote working is becoming increasingly common, it is likely that the DRC tax authorities will develop specific regulations to govern these new forms of work and clarify the tax and social obligations of companies and remote employees.

# 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 contracts; and
- indefinite period contracts.

**Is there a concept of dual employment or deemed employment in the DRC? In what instances would this apply?**
In the DRC, the Labour Code does not contain any explicit provision prohibiting double employment, i.e. an employee having several employment contracts with different employers at the same time. However, certain restrictions may apply depending on:

- Clauses in the employment contract, which may impose an exclusivity obligation and prohibit the employee from carrying out another professional activity.
- The employer's internal rules, which may restrict multiple jobs in order to guarantee the employee's availability or avoid a conflict of interest.
- The nature of the position held, particularly for employees performing sensitive functions in the private sector. For example, working on software that is essential to the company (e.g. banking systems, e-commerce platforms).

Article 52 of the Labour Code imposes an obligation of confidentiality and non-competition on employees. They are required to keep the company's manufacturing and business secrets and to refrain from any act of unfair competition, even after their contract has ended. Thus, an employee who holds two jobs in competing companies could be penalised if it is established that they used strategic information from their first employer for the benefit of the second.

## The concept of deemed employment in the DRC

Article 7 of the Labour Code defines an employment contract as any written or verbal agreement by which a person, the worker, undertakes to perform manual or other work under the direct or indirect direction and authority of an employer, in return for remuneration.

An employment relationship can be presumed as soon as these three conditions are met:

1. A work service provided by one person.
2. A relationship of subordination, implying that the employer exercises direct or indirect control over the worker.
3. Remuneration, whether fixed or variable.

Presumed employment may apply in the following cases in particular:

- Informal workers, who fulfil all the conditions of an employment contract (subordination, remuneration, tasks imposed) but without a written contractual document.
- Self-employed consultants or service providers, where their relationship with the client company can be assimilated to salaried employment by virtue of their subordination.
- Workers made available by another company who, in reality, work under the direction and control of the recipient company.

In such cases, the labour courts may reclassify the relationship as a salaried employment contract, requiring the employer to comply with all legal obligations, particularly in terms of social security, paid leave and protection against unfair dismissal.

## Immigration

**Do foreign employees require permits to work and which visas may be obtained to allow foreigners to work?**
Before a foreigner can take up employment in the 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 (a general work permit or VET)
- 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 their work permit.

## CONDITIONS OF EMPLOYMENT

**Are contracts of employment required?**
An employment contract may be oral or in writing.

**Are there any formality requirements attached to employment contracts, e.g. 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, the employee must receive a copy at least two days before they are required to sign it.

**Are zero-hour contracts permissible (contracts without a minimum set of working hours or any basic salary undertaking)?**
In the DRC, the Labour Code does not expressly recognise 'zero-hour' contracts, which are contracts that guarantee neither a minimum number of working hours nor fixed remuneration. Several legal provisions make such contracts difficult to apply under Congolese labour law.

**AN EMPLOYMENT CONTRACT MAY BE ORAL OR REDUCED TO WRITING.**

The following provisions of the Labour Code pose a challenge for zero-hour contracts:

- Article 50 imposes an obligation on workers to perform their work personally under the agreed conditions, at the agreed time and place, which presupposes that the employment contract clearly sets out how the work is to be performed.
- Article 55 requires the employer to provide the worker with the agreed job, which means that it cannot be left to the employer's sole discretion whether or not to allocate working hours.
- In addition, Article 98 provides that remuneration must be paid in cash, while Article 99 requires payment at regular intervals, not exceeding one month. These provisions render a contract in which the employer has no obligation to guarantee a minimum remuneration illegal.
- Article 212 stipulates that any written contract must specify the nature and terms of the work to be performed, which means that the number of hours worked and the terms of remuneration must be defined in advance.

- Working hours in the DRC are strictly regulated. Article 119 of the Labour Code sets the legal working time at 45 hours per week and eight hours per day. Any hours worked in excess of this are considered to be overtime and the worker is entitled to additional pay. In this context, a contract guaranteeing no minimum working hours and allowing the employer to decide unilaterally on the hours assigned would not comply with Congolese legal requirements.

## 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 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?**
No. This is not provided for in employment legislation in the DRC.

**Is there a minimum wage requirement?**
The minimum wage in the DRC is governed by Decree No. 18/017 of 22 May 2018. It is set throughout the country at CDF 7,075 (2.50 USD) per day from 1 June 2019.

**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, this does not include the time required for the employee to travel to and from work.

In each period of seven days, every employee is entitled to a minimum of 24 hours of continuous rest. At all possible times this rest should be granted to all employees at the same time and the rest day is usually a Sunday. However, collective agreements may provide for special conditions regarding working hours.

**What are the minimum requirements relating to overtime?**
Hours worked beyond the standard hours of work are considered overtime and an employee is entitled 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 year's continuous service. Leave is calculated in relation to the employee's age. Workers who are older than 18 earn one day of leave for every month served. Therefore, if an employee older than 18 has worked for a year they will only be entitled to 12 days of leave in that year. Employees who are under the age of 18 earn 1.5 days of leave for every month worked. Therefore, an employee who is under the age of 18 will be entitled to 18 days of leave for the year. The number of leave days increases by one day for 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?**
The inability to work due to illness or accident suspends the employment contract.

If a contract is suspended, the employer may not terminate the contract immediately. However, if the incapacity lasts for more than six consecutive months (except in the case of an industrial accident or occupational disease), the employer may give notice of termination of the contract. The contract is terminated on the day following notification. In this case, the employer must pay a termination indemnity equivalent to the notice period provided for in an open-ended contract.

During the suspension of a contract due to illness or accident, the employee retains two-thirds of their remuneration in cash and all family allowances. Benefits in kind must continue to be paid, unless the employee prefers their equivalent in cash (except for housing, which cannot be replaced by monetary compensation).

If the illness or accident is recognised as work-related, the employee retains their entitlement to two-thirds of their cash remuneration and family allowances for the first six months of the contract suspension. The employer may deduct the compensation paid by the CNSS from the employee's salary, subject to validation by this body. Benefits in kind remain in force, unless the employee requests their equivalent in cash (again, excluding housing).

In short, a sick or injured worker benefits from six months' protection against dismissal, continued partial remuneration and certain benefits. After six months of continuous incapacity (excluding work-related accident or illness), the employer can terminate the contract with compensation.

**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 of 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 a spouse, parent or first-degree relative;
- one business day for the marriage of a child; and
- two business days for the death of a second-degree relative.

The employer is only obliged to pay up to 15 working days' leave per year.

**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 a 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.

Legislation in the DRC provides a framework for this representation, notably through Decree No. 048/CAB/VPM/METPS/2015 of 8 October 2015. Workers elect delegates according to the size of the company. These delegates are responsible for representing employees' interests to the employer. Many workers belong to unions, such as the Union Nationale des Travailleurs Congolais, which negotiate regularly with employers. Unions and employee delegates can take part in discussions on changes to employment conditions, although their influence varies from company to company and sector to sector.

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

## 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.

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

### 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 their employees. Employers are further required to have medical staff and facilities on site or in the vicinity, depending on the number of workers.

### 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.

**Do employees who work remotely from a foreign jurisdiction and pay taxes in their country of residence, require a DRC work permit to render services to an entity in the DRC?**
In the DRC, legislation on employment and immigration mainly concerns workers carrying out an activity in the national territory of the DRC. A foreign worker who carries out their duties exclusively at a distance from their country of residence, without being physically present in the DRC, is not subject to the DRC's work permit requirements.

A work permit in the DRC is compulsory for foreigners carrying out a professional activity in DRC territory. However, an employee working remotely from abroad and paying tax in their country of residence is not considered a local worker within the meaning of the Labour Code.

Even if an employee does not require a work permit in the DRC, the contractual relationship between the Congolese company and the remote worker may have tax and legal implications:

- **Taxation:** If the employee already pays tax in their country of residence, they are generally not liable for tax in the DRC, unless tax agreements between the two countries stipulate otherwise. However, Article 83 of Ordinance-Law No. 69-009 of 10 February 1969 provides that any remuneration for services paid to a natural or legal person not established in the DRC is subject to a 14% professional tax. As a result, Congolese companies that pay a worker abroad may be required to withhold and remit this tax to the Congolese tax authorities.
- **Applicable law:** Employment contracts performed in the DRC are governed by the Labour Code (Article 1). In the case of an employee working remotely from abroad, the contract is governed by Congolese law.

- **Social security contributions:** In the absence of a physical presence in the DRC, the worker is not subject to Congolese social security contributions, but may be subject to the social security schemes of his or her country of residence.

If the employee works partly from the DRC, even remotely, the DRC authorities may require a work visa and a work permit for this period. The company in the DRC would then have to comply with the procedures in force for employing foreign workers.

An employee who works exclusively remotely from a foreign jurisdiction and pays taxes in his or her country of residence does not need a DRC work permit to provide services to an entity based in the DRC. However, under Article 83 of Ordinance-Law No. 69-009 of 10 February 1969, remuneration paid by a Congolese company to a worker established abroad may be subject to a 14% withholding tax.

Tax, contractual and regulatory implications may exist depending on the laws of each country, and in the event of a physical presence in the DRC, even for remote work, a work permit may be required.

### Other social benefits

**What other employee social benefits must the employer either contribute to or deduct from employee contributions?**
Article 1 of the Social Security Act 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 18% 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 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 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. However, in accordance with Article 263 of the Labour Code, the employer is required to inform the delegation at least every six months of data relating to the operation and economic and social situation of the company or establishment. This information includes sales or equivalent data, the general productivity index, overall profits, changes in sales prices, the main lines of the development programme and future prospects. In this context, the transfer of the company could be covered by this information obligation.

**THE EMPLOYER HAS THE RIGHT TO INVESTIGATE THE ALLEGED MISCONDUCT.**

**Joint and several liability for employers?**
In the event of a company transfer, the new employer is subrogated to the rights and obligations of the former employer, in accordance with Article 81 of the Labour Code. It therefore assumes all obligations towards the transferred employees. The joint and several liability of the old and new employers applies only in the event of agreement between the parties.

**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?**
This is not provided for in the law.

## 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 its intent to terminate the employment contract within 15 working days of the discovery of the facts constituting the gross misconduct.

Where there is no gross misconduct, the employer must notify the employee its intent to terminate the employment contract. Either party may terminate the contract upon giving the following notice (unless the parties or the collective bargaining agreement stipulates a longer notice period):

- For workers in jobs in categories 1 to 5, the minimum notice period is 14 working days from the day after notification. This period is increased by seven working days for each full year of continuous service.
- For supervisors, the minimum notice period is one month. This period is increased by nine working days for each full year of continuous service.
- In the case of employees in collaborative and executive positions, the period of notice is set at three months. This period is increased by 16 working days for each full year of continuous service.

**What substantive fairness requirements exist?**
The employer has the right to investigate the alleged misconduct.

**What are the dispute resolution mechanisms?**
The Labour Court presides over all labour disputes in the DRC. Disputes are first submitted to a labour inspector for conciliation. Should conciliation fail, the party concerned may refer the matter to the Labour Court.

**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 in Article 73 of the Labour Code. If an employer breaches the contract of employment and the other party suffers any loss they may claim damages from the other party. In the case of a fixed-term employment contract, these damages will be calculated in accordance with the remuneration that the party would have received had the breach not occurred. In the case of an open-ended employment contract, in the absence of reinstatement, the employee is entitled to damages set by the Labour Court, calculated taking into account the nature of the services rendered, the employee's seniority with the company, and their age and rights acquired in any capacity whatsoever. However, the amount of such damages may not exceed 36 months' worth of the employee's last remuneration.

**Is third party approval for termination/ termination documents required?**
No. However, any dismissal of a full or alternate delegate envisaged by the employer or their representative, and any transfer resulting in the loss of delegate status, are subject to the suspensive condition of approval by the local labour inspector.

**THE DRC LABOUR CODE PROVIDES THAT AN EMPLOYEE MAY RETRENCH EMPLOYEES FOR ECONOMIC REASONS OR FOR STRUCTURAL PURPOSES.**

## Termination for incapacity

**What substantive fairness requirements exist?**
The employee must be unable to be employed in their original position and there is 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?**
A labour inspector must be approached for a preliminary conciliation attempt. If this fails, the matter can be taken to the 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 employee may retrench employees for economic reasons or structural purposes.

An employer is required to consult with its 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 dependents.

**What are the dispute resolution mechanisms?**
The Labour Court presides 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, it must first offer the employment to the retrenched employee.

**Is third party approval for termination/ termination documents required?**
Before a retrenchment is carried out, a labour inspector must ensure 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 it failed to follow the correct procedure.

**Is it permissible to offer employees a voluntary separation package during a redundancy process? Does this undermine the legitimacy of the retrenchment/redundancy process?**
Article 61 of the Labour Code states that any employment contract may be terminated at the initiative of either the employer or the employee. This means that an employer and an employee can agree on a mutual separation, including a voluntary separation package, as long as it respects the employee's rights and is formalised in writing.

However, Article 78 of the Labour Code prohibits mass layoffs, except when expressly authorised by the Minister of Labour and Social Welfare. If an employer intends to dismiss several employees for economic reasons, it must comply with specific legal requirements, including:

- Adhering to the legally established order of dismissals, considering seniority, professional qualifications and family responsibilities.

- Consulting workers' representatives at least 15 days in advance before implementing any redundancies.
- Granting priority re-employment rights to dismissed employees for up to two years.

In this context, a voluntary separation package may be offered but not imposed. The labour inspector must verify that the selection criteria for dismissals are respected and that workers are not forced to accept voluntary departures in violation of their rights.

**Impact on the legitimacy of the redundancy process**

Offering a voluntary separation package does not necessarily undermine the legitimacy of the redundancy process if it is transparent and compliant with legal requirements. However, it may be problematic if it is used to:

- Avoid the obligation to justify economic reasons as required by Article 78 of the Labour Code.
- Bypass the legal order of dismissals, pressuring certain employees to accept voluntary departures when they might not have been selected for redundancy under normal circumstances.
- Coerce employees into accepting a voluntary departure, misleading them into believing that dismissal is inevitable.

According to Decree No. 12/CAB.MIN/TPS/116/2005 of 26 October 2005, any collective dismissal must be authorised by the Minister of Labour if the number of redundancies exceeds specific thresholds (e.g. 10 employees for a company with 21 to 100 workers, 50 for a company with 501 to 1000 workers, etc.). In this regard, voluntary separation packages cannot be used to disguise an unauthorised mass redundancy.

If the employer fails to comply with the procedure, the labour inspector must notify the employer in writing, which must respond before proceeding with the redundancies. Any economic dismissal carried out in violation of the applicable regulations is considered abusive and may expose the employer to legal consequences.

## Notice requirements

An employer is required to consult with its 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 law does not contain any provisions for a severance package.

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

The law 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 had been terminated may be paid a "*termination allowance*" if the contract or collective agreement so provided. It is therefore presumed 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.

**How is severance pay calculated?**

Unlike in other countries, the Labour Code does not provide for automatic redundancy pay. An employee who is dismissed is only entitled to financial compensation if this is provided for in a collective agreement, company agreement or employment contract. However, in the event of unfair dismissal, the employee may be entitled to damages.

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

### Redundancy pay for an open-ended contract

In accordance with the provisions of Article 63 of the Labour Code, when an employer terminates an open-ended contract without just cause, the employee may request either reinstatement or payment of damages set by the Labour Court.

The court sets the compensation on the basis of a number of criteria, including:

- the employee's length of service with the company;
- the nature of the services rendered;
- the employee's age; and
- the rights acquired during their employment.

However, the maximum amount of damages in the event of unfair dismissal is capped at 36 months' salary.

If the employer does not respect the notice period, it must also pay the employee compensation equivalent to the salary and benefits that the employee would have received during the notice period that was not respected.

### Compensation for early termination of a fixed-term contract

In accordance with the provisions of Articles 69 and 70 of the Labour Code, a fixed-term contract ends on the date agreed between the parties. It may not be terminated early, except in cases of gross negligence on the part of the employee or in cases of *force majeure*.

If the employer terminates the contract for no legal reason, it must pay the employee compensation equivalent to the wages and benefits they would have received until the normal end of the contract.

### Other sums due and compensation for untaken leave

According to Article 100 of the Labour Code, any sums remaining due under the employment contract on the definitive termination of effective services must be paid to the employee (or to their beneficiaries) within two working days of the termination of services.

In addition, according to article 144 of the Labour Code, if an employee has not taken their leave before the termination of the contract, it must be replaced by a compensatory indemnity calculated in accordance with the legal provisions. Apart from this situation, any clause providing for a compensatory indemnity in *lieu of leave* is null and void.

### Special cases: Collective agreements and specific agreements

Although the Labour Code does not provide for automatic redundancy pay, some companies may include it in a collective agreement or company agreement. In such cases, employees who are made redundant will be entitled to redundancy pay in accordance with the conditions laid down in these internal agreements.

In the DRC, there is no compulsory redundancy pay, unless this is provided for in a collective agreement or company agreement. However, in the event of unfair dismissal under an open-ended employment contract, the employee may claim damages, capped at 36 months' salary.

Furthermore, in the event of early termination of a fixed-term contract for no legal reason, the employer must compensate the employee up to the amount of the salary he would have received until the end of the contract. Finally, the employer is required to pay all sums due to the employee, including compensation for untaken leave, within two working days of termination of the contract.

**Are any termination benefits payable in the event of voluntary resignation by an employee?**
The law 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 pay 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 that allows an employer to offer early retirement to employees who are close to retirement age to minimise the effect of retrenchments.

## RETIREMENT

**What is the normal retirement age?**
The voluntary retirement age is 60. At age 65, retirement is automatic.

**THE VOLUNTARY RETIREMENT AGE IS 60 FOR MEN AND FOR WOMEN**

## POST-TERMINATION RESTRAINTS

### Enforceability of non-compete provisions

**Can contractual non-compete provisions be enforced?**
The Labour Code is silent on these provisions during the performance of the employment contract.

After termination of the contract, the Labour Code stipulates that any clause prohibiting the employee from running a business of their own to forming a partnership to run a business or working for other employers, is null and void.

However, where the contract has been terminated as a result of gross negligence on the part of the employee, or where the employee has terminated the contract through no gross negligence on the part of the employer, the clause will cease to have effect provided that the employee has such knowledge of the employer's clientele or business secrets as to be seriously prejudicial to the employer, that the prohibition relates to activities that the employee carried out for the employer, and that the duration of the prohibition does not exceed one year from the end of the contract.

The non-competition clause may provide for a contractual penalty to be paid by the employee who violates the prohibition. At the employee's request, the competent court will reduce the excessive contractual fine to a fair amount.

### Confidentiality and trade secrets

**What protections are offered to employers in respect of their confidential information/trade secrets?**
The Labour Code stipulates that an employee must keep the company's manufacturing or business secrets and refrain from engaging in or collaborating with any act of unfair competition, even after their contract has expired.

# ESWATINI

| | |
|---|---|
| Official language(s): | English, Siswati |
| Population (approx.): | **1.3m** |
| Unemployment rate (2024): | **34.6%** |
| Name of court for labour matters: | Industrial Court and the Industrial Court of Appeal |
| 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 99 of 1980 (Employment Act)
- Employment (Amendment) Act 11 of 1981
- Employment (Amendment) Act 5 of 1997
- Industrial Relations Act 1 of 2000
- Industrial Relations (Amendment) Act 3 of 2005
- Industrial Relations (Amendment) Act 6 of 2010
- Workmen's Compensation Act 7 of 1983
- Occupational Safety and Health Act 9 of 2001
- Provident Fund Order, 23 of 1974
- Data Protection Act 5 of 2022 (Data Protection Act)

### Regulatory rating

*Heavily regulated.*

**Siphesihle Kunene**
Professional Assistant

# Henwood & Company

## The practice of Henwood & Company which was previously known as Cloete Henwood Associated, a firm which was established on the 1st of June 2003 by Robert John Cloete and Earl John Henwood who then practiced under the style Cloete Corporate Consultants.

Both R J Cloete and E J Henwood were erstwhile partners of the firm Robinson Bertram and between them at the time had in excess of 55 years combined legal experience. Robert Cloete was admitted to practice originally in South Africa on the 24th of April 1975 and in Swaziland on the 22nd of May 1987. John Henwood was admitted to practice on the 8th of March 1996 and remains enrolled as an attorney and litigation practitioner in the Kingdom. Robert John Cloete retired from the practice and was appointed as a Judge of the Supreme Court of Eswatini in July 2015. Cloete, has since retired as a Judge and is now attached to our firm as a consultant.

Our firm is a general business civil law firm with a bias towards commercial practice in all its forms. We are very active in the field of Competition law, Civil Litigation, Tax and General Commercial Law. Our practice areas include the following:

- General Corporate and Commercial Law including Commercial Litigation.
- Civil litigation in the Supreme Court, the High Courts and the Magistrates Courts;
- Competition Law including Mergers and Acquisitions
- Project Development and Project Finance
- Mining licences and hydro power or power purchase agreements
- General and specialized contract drafting and legal opinions in all arrears of Civil Law.
- Labour and Employment Law
- Public law and regulatory compliance
- Insolvency, liquidations, foreclosures and the administration of insolvency estates
- Insurance law
- Information technology
- Debt collections
- Administration of Estates
- Financial services law and capital markets
- Administrative law.
- Company Law including Company Secretarial and Regulatory Services.

**Contact:** ejh@triplec.co.sz

## TRENDS

### General

There are a number of trends in Eswatini that directly impact the current and future rights and benefits of employers and employees. Among these trends is the conversion of the Eswatini National Provident Fund into a pension fund. This change aims to provide a more sustainable and inclusive social security system for all economically active workers in Eswatini. The conversion will mean a shift from providing lump-sum payments upon retirement to offering monthly pensions. The new pension fund will extend benefits to a wider range of workers, including those in the informal economy and domestic workers, who were previously excluded.

The Employment Bill, 2024 will be instrumental in shaping the landscape of employment law in Eswatini. Proposed changes to the current Employment Act may include a ban on labour brokers in the workplace and the introduction of new rights for woman in the workplace, which are not provided for in the current legislation. The bill remains in draft form and its provisions remain open for comment.

### The introduction of artificial intelligence in the workplace

The phenomenon of artificial intelligence (AI) in the workplace is a concept yet to be adopted and embraced by employers. The legislature has not made any inroads in this field and currently there are no regulations in place that regulate the introduction and use of AI in the workplace. This effectively means that there are no limits or prohibitions on the use of AI. However, a number of forums have explored the introduction of AI in the workplace and notably, the Labour Law Seminar held on the 19–20 March 2025 where there was a discussion about the impact of AI in the workplace. Employers who intend to introduce AI may formulate their own internal policies on its use.

### Data protection and privacy

The Data Protection Act makes provision for the collection, processing, disclosure and protection of personal data; balancing the competing values of privacy, sector-specific laws and other related matters. The act designates the Eswatini Communication Commission as the Eswatini Data Protection Authority charged with the mandate to administer and foster compliance with the act.

In terms of the Data Protection Act, "*data controller*" means a public or private body or any other person designated by law, which alone or together with others, determines the purpose of and means for processing personal information, regardless of whether or not such data is processed by that party or by a data processor on its behalf, where the purpose and means of processing are determined by law.

Notably, employers who are data controllers have an obligation in terms of the act to secure the integrity of personal information in their possession or under their control by taking appropriate, reasonable technical and administrative measures to prevent loss, damage and unauthorised distribution of personal information and unlawful access to personal information.

### Remote working and its implications for the payment of taxes where employees work from another jurisdiction

All employees who earn an income from an employer in Eswatini are obliged to pay income tax at the prescribed rate. The employer, in turn, is required to deduct the prescribed tax amount from the employee's salary and make payment to the Eswatini Revenue Service. The income tax payable by the employee would be dependent on the tax bracket determined by the Eswatini Revenue Service.

## HIRING DECISIONS

### Pre-hire checks

**May employers conduct pre-hire checks?**
This is not prohibited under the Employment Act and pre-hire checks are conducted by some employers in Eswatini. These include reference checks, criminal record checks and the like.

### Hiring options

**What hiring options are available to employers?**
Hiring options in Eswatini include:

- contracts which are predominantly performed in Eswatini;
- contracts which are predominantly performed outside of Eswatini, or foreign contracts of employment;
- non-standard employment;
- fixed-term contracts of employment;
- casual workers;
- permanent contracts employment; and
- seasonal workers.

**Is there a concept of dual employment or deemed employment in Eswatini, in what instances would this apply?**
The Employment Act does not make any provision for deemed employment or dual employment. In formal sectors this practice is prohibited by employers, however, there is no statutory reference of the prohibition of dual employment. Informally, employees do engage in dual employment where the second contract of employment does not impede or interfere with the main employment. There is no concept of deemed employment.

### Immigration

**Do foreign employees require permits to work and which visas may be obtained to allow foreigners to work?**
In terms of the law, foreign employees are required to obtain work permits for purposes of lawfully engaging in a contract of employment in Eswatini. In order to obtain a work permit, the foreign employee must submit their application to the Ministry of Home Affairs, which application should include the following:

- completed Form 3 application;
- two passport-size photos;
- application cover letter from employer;
- proof of post advert;
- original police clearance from country of origin that is internationally recognised;
- qualification certificates;
- medical certificates; and
- certificate of incorporation.

All copies of these documents must be certified.

## CONDITIONS OF EMPLOYMENT

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

In relation to foreign workers, the law in Eswatini places a limitation on an employer's discretion to employ foreign employees in certain industries or positions. For example, in the banking sector, the Central Bank as the regulator must approve appointments of executive positions for each bank where the employee is a foreigner. However, there are no limitations on an employer's discretion to determine new hires for local employees.

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

The Employment Act recognises employment contracts that are either written or verbal. A contract of employment may be concluded by an employer and employee tacitly or implied, however the obligation is on the employer to provide an employee with a copy of the employment contract, as per section 22 and the Second Schedule to the Employment Act. The prescribed format of the employment contract must record the essential terms and conditions of the employee's employment.

**Are zero-hour contracts permissible (contracts without a minimum set of working hours or any basic salary undertaking)**

The Employment Act does not expressly prohibit zero-hour contracts. The practice with most employers is that the employee will be placed on zero-hour terms of employment for a certain specified period which will be agreed to between the employer and the employee.

### Probation

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

An employer may place new employees on a probation period, which must not exceed three months. For employees in supervisory, technical or confidential work, the contract of employment may stipulate in writing a probation period longer than three months, but not more than six months.

**THE ESWATINI EMPLOYMENT ACT RECOGNIZES EMPLOYMENT CONTRACTS WHICH ARE EITHER WRITTEN OR VERBAL.**

**GENERAL RATES OF OVERTIME ARE NOT PRESCRIBED BY THE EMPLOYMENT ACT.**

## 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?**
The law in Eswatini does not prescribe minimum wages to be paid by employers to their employees, save for the industries that are regulated by wage regulations. These regulated industries include: motor engineering trades; domestic employees; the agricultural industry; the forestry industry; the building and construction sector; retail; hairdressing; the wholesale and distributive trades industry; hotel, accommodation, catering and fast foods trade; the manufacturing and processing industry; the security services industry; mining and quarrying; the textile and apparel industry; the road transportation industry; and support employees in schools and educational institutions.

**What are standard/maximum working hours? Are there prescribed minimum resting periods during normal working day/week?**
The employment contract must record the essential terms and conditions of an employee's employment, including working hours and the employee's remuneration. The Employment Act does not make provision for standard maximum working hours or minimum resting periods. This is usually regulated by the contract of employment and will be recorded in the essential terms and conditions of employment, which is required by section 22 of the Employment Act. However, for the specific regulated industries mentioned above, maximum working hours are stipulated per industry.

**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 contract. Further, wage orders for the various regulated sectors or industries make provisions for the payment of overtime.

**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 of holiday leave. During this leave, employees must be paid the same 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 the completion of the first three months of service, an employee is entitled to 14 days of 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 note when they take sick leave.

**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 as a result 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 of completed service.

**Are employees automatically entitled to bonus payments?**
This is not outlined explicitly in the Employment Act and therefore, employees are not automatically entitled to bonus payments. Employers may pay employees a discretionary bonus. This entitlement may also be included in the terms and conditions set out 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?**
Employees are not automatically entitled to a periodic increase. A consensus between the parties may be reached after engagements or consultations with the employees, or in appropriate circumstances with the employees' union or trade union.

**Can employment terms be changed without achieving agreement with the employees?**
An employer may amend the terms and conditions of employment for an employee, however, the employer is obligated to notify the employee in writing specifying the changes which are being made, provided that such changes in the terms and conditions of employment do not result in less favourable terms and conditions of employment than those previously enjoyed by the employee. Where the terms and conditions have been changed to less favourable terms, the employee may notify the Labour Commissioner within 14 days of receipt of the notice of change of their terms and conditions of employment.

**Are employees commonly represented in their interactions with employers relating to changes to employment terms?**
In cases where the employee is part of a union or a trade union, they are allowed to have representation from their union in their interactions with the employer where changes of employment terms are discussed.

## SOCIAL BENEFITS, TAX AND PENSIONS

### Workplace injuries

**In the event of workplace injury/disease, will employees be intitled to some form of compensation?**
Section 5(1) of the Workman's Compensation Act provides that if any personal injury is caused to an employee by an accident at work, the employer shall be liable to pay compensation in accordance with the Workman's Compensation Act.

## Return to work

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

This is dependent on the nature of the injury. In terms of the common law, where an employee is permanently disabled and cannot be given suitable alternative work within the employer's company, the employee's employment may be terminated. However, where the injury or disability suffered by the employee is temporary, the employer has a duty to reintegrate the employee.

## 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 duty on the employer to provide membership to medical aids or other benefits. However, the parties may, by agreement, make provision for membership to a medical aid scheme; this will be regulated by the employment contract that governs the relationship between the parties. It is common practice for employers to provide medical assistance in contracts 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 in Eswatini are obliged to pay income tax at the prescribed rate. The employer, in turn, is required to deduct the prescribed tax amount from the employee's salary and to make payment of same to the Eswatini Revenue Service. The income tax payable by the employee would be dependent on the tax bracket determined by the Eswatini Revenue Service.

**Do employees who work remotely from a foreign jurisdiction and pay taxes in their country of residence, required an Eswatini work permit to render services to an Eswatini entity?**

Eswatini is a source-based tax jurisdiction. Income tax is levied on all income derived from a source within or deemed to be within Eswatini, irrespective of whether the recipient of the income is actually a resident in Eswatini.

**THE INCOME TAX PAYABLE BY THE EMPLOYEE WOULD BE DEPENDENT ON THE TAX BRACKET DETERMINED BY THE ESWATINI REVENUE SERVICES.**

## Other social benefits

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

Section 22, read with the Second Schedule, of the Employment Act provides that the employment contract must record the essential terms and conditions of employment, including pension 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 section 56(1)(b) of the Employment Act. An employer that employs more than five employees is obliged to register 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?**

An employer that is a data controller or data processor is obligated to secure the integrity of personal information in its possession or under its control by taking appropriate, reasonable technical and administrative measures to prevent loss, damage and unauthorised use of personal information, and unlawful access to personal information.

## BUSINESS TRANSFERS

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

Sales, mergers or take-overs result in the termination of the contracts of employment between a company and its employees. Section 33(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?**

The employees that will be affected by the sale of business must be consulted with a view to reach a consensus on the effects of the sale of business as an ongoing concern, the payment of terminal benefits and whether the employees will be retained by the new owner.

**Joint and several liability for employers?**

The employer that sells its business or whose business is taken over is obligated to pay the employees all their terminal benefits prior to such sale or takeover. The new owner may be liable to pay for the terminal benefits where a written guarantee has been made to the employees for payment of the terminal benefits.

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

The effect of a sale of business as a going concern generally terminates the relationship between the original employer and its employees. The new owner is at liberty to engage the employees on new terms and conditions, which must be agreed to by the parties, and these will govern the new contract of employment.

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

An employer that fails to pay terminal benefits that accrue to employees shall, upon conviction, be liable to a fine not exceeding SZL 6,000 or to imprisonment not exceeding two years, or both.

## TERMINATION OF EMPLOYMENT

**What are the statutory obligations and procedures for termination of 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 of continuous 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 continuous employment after the first year of employment, if the employee has been employed for more than one year.

Further, the employer must afford the employee a fair disciplinary process prior to the termination of the contract of employment where it is alleged that the employee has committed misconduct.

**SECTION 33(1) OF THE ESWATINI 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.**

## Termination for misconduct

### What fair process requirements exist?

A fair process includes the following:

- An investigation should be conducted by the employer to ascertain whether there are grounds for a hearing.
- If a hearing is to be held, the employer must notify the employee of all the allegations using a form and language that the employee can reasonably understand. The employee is entitled to a reasonable time to prepare for the hearing and to be assisted at the hearing by a fellow employee.
- The hearing must be heard and finalised within a reasonable time and chaired by a sufficiently senior and impartial representative from management.
- The employer must be given a proper opportunity at the hearing to respond to the allegations.

### What substantive fairness requirements exist?

For a dismissal to be substantively fair, it must be for one or more of the reasons stipulated in section 36 of the Employment Act, which provides that:

*"It shall be fair for an employer to terminate the services of an employee for any of the following reasons:*

a. *because the conduct or work performance of the employee has, after written warning, been such that the employer cannot reasonably be expected to continue to employ him;*
b. *because the employee is guilty of a dishonest act, violence, threats or ill treatment towards his employer, or towards any member of the employer's family or any other employee of the undertaking in which he is employed;*
c. *because the employee wilfully causes damage to the buildings, machinery, tools, raw materials or other objects connected with the undertaking in which he is employed;*
d. *because the employee, either by imprudence or carelessness, endangers the safety of the undertaking or any person employed or resident therein;*
e. *because the employee has wilfully revealed manufacturing secrets or matters of a confidential nature to another person which is, or is likely to be, detrimental to his employer;*
f. *because the employee has absented himself from work for more than a total of three working days in any period of 30 days without either the permission of the employer or a certificate signed by a medical practitioner certifying that he was unfit for work on those occasions;*
g. *because the employee refuses either to adopt safety measures or follow the instructions of his employer in regard to the prevention of accidents or disease;*
h. *because the employee has been committed to prison and thus prevented from fulfilling his obligations under his contract of employment;*
i. *because the employer is unable to continue in employment without contravening this act or any other law;*
j. *because the employee is redundant; (Renumbered A.4/1985.)*
k. *because the employee has attained the age which in the undertaking in which he was employed is the normal retiring age for employees holding the position that he held;*
l. *for any other reason which entails for the employer or the undertaking similar detrimental consequences to those set out in this section."*

### What are the dispute resolution mechanisms?

The Industrial Relations Act makes provision (under Part VIII, in particular section 62) for dispute resolution under the auspices of the Conciliation, Mediation and Arbitration Commission (Commission). The Commission is obligated to conciliate disputes referred to it by any aggrieved party in the course of an employment relationship. Where conciliation fails, the Commission may, by consent of the parties, mediate or arbitrate over the dispute. Parties to a dispute can also refer the matter to court if it has been unsuccessful in this forum and a certificate of unresolved dispute is issued by the Commission.

**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 re-engagement for unfair dismissal unless the employee does not wish for this as a 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 documents required?**
No.

## Termination for incapacity

**What fair process requirements exist?**

- An investigation should be conducted by the employer to ascertain whether there are grounds for a hearing.
- If a hearing is to be held, the employer must notify the employee of all the allegations using a form and language that the employee can reasonably understand. The employee is entitled to a reasonable time to prepare for the hearing and to be assisted at the hearing by a fellow employee.
- The hearing must be heard and finalised within a reasonable time and chaired by a sufficiently senior and impartial representative from management.
- The employer must be given a proper opportunity at the hearing to respond to the allegations.

**What substantive fairness requirements exist?**
The code of good practice provides that any person determining whether a termination for incapacity arising ill health or injury must consider:

- whether the employee is able to perform the work; and
- if the employee is not capable:
  - the extent to which the employee is able to work;
  - the extent to which the employee's work circumstances might be adapted to accommodate disability, or if this is not possible, the extent to which the employee's duties might be adapted; and
  - the availability of any suitable alternative work.

**What are the dispute resolution mechanisms?**
Disputes arising from the termination of an employment contract due to incapacity must be referred to the Conciliation Mediation and Arbitration Commission, established in terms of section 62 of the Industrial Relations Act. This section empowers the Commission to conciliate matters reported to it and further arbitrate or mediate on the disputes where the parties consent to same.

**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 re-engagement for unfair dismissal, unless the employee does not wish for this to happen as continuing the 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.

Where the termination is substantively fair there are no benefits payable, however, where the termination for misconduct is found to be substantively unfair, the employee will be entitled to:

- notice pay;
- additional notice pay;
- severance allowance; and
- leave pay due to them

**Is third party approval for termination/ termination documents required?**
A registered medical practitioner must certify that the employee cannot carry out normal duties.

**SECTION 16(1) OF THE INDUSTRIAL ACT PROVIDES THE FOLLOWING REMEDIES:**

- **REINSTATEMENT**
- **RE-ENGAGEMENT**
- **COMPENSATION**

## Termination for operational requirements

**What fair process requirements exist?**
Termination for operational requirements must comply with the provisions of section 40 of the Employment Act:

> "*Where an employer contemplates terminating the contracts of employment of five or more of his employees for reasons of redundancy, he shall give not less than one month's notice thereof in writing to the Labour Commissioner and to the organisation (if any) with which he is a party to a collective agreement and such notice shall include the following information:*
>
> - *the number of employees likely to become redundant;*
> - *the occupations and remuneration of the employees affected;*
> - *the reasons for the redundancies;*
> - *the date when the redundancies are likely to take effect;*
> - *the latest financial statements and audited accounts of the undertaking; (Added A.5/1997)*
> - *what other opinions have been looked into to avert or minimize the redundancy.*"

The employer should consult the affected employees and their trade union, in a genuine attempt to achieve consensus. In order for this to be effective, the consultation process must commence as soon as a reduction of the workforce through retrenchment is contemplated by the employer so that possible alternatives can be explored. The consultation process should allow the employees' representatives to engage meaningfully with the employer.

Selection criteria for retrenchment should be agreed with the employees' representative, failing which the criteria used by the employer must be fair and objective.

**What substantive fairness requirement exist?**
It is difficult to define all the circumstances that might legitimately form the basis of a dismissal for operational requirements. As a general rule the re-organisation of business arises from restructuring of the business as a result of a number of possible related causes such as the merger of business. Other reasons may include:

- A change in the nature of the business, more effective ways of working, a transfer of the business or part of the business, economic reasons that relate to the financial management of the enterprise.
- Technological reasons such as the introduction of new technology which makes existing jobs redundant or that requires employees to adapt to new technology.
- 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.
- Alteration in products or production methods necessitating different skills on the part of employees.

**What are the dispute resolution mechanisms?**
The Industrial Relations Act makes provision for dispute resolution under the auspices of the Conciliation, Mediation and Arbitration Commission. The Commission is obligated to conciliate disputes referred to it by any aggrieved party in the course of an employment relationship. Where conciliation fails, the Commission may, by consent of the parties, mediate or arbitrate over the dispute. Parties to a dispute can also refer the matter to court if it has been unsuccessful in this forum and a certificate of unresolved dispute is issued by the Commission.

**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 re-engagement 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.

Where the termination is substantively fair there are no benefits payable, however, where the termination for misconduct is found to be substantively unfair, the employee will be entitled to:

- notice pay;
- additional notice pay;
- severance allowance; and
- leave pay due to them.

**Is it permissible to offer employees a voluntary separation package during a redundancy process? Does this undermine the legitimacy of the retrenchment/redundancy process?**
Yes. It is permissible where the voluntary separation package is offered as an alternative to redundancy and the employee voluntary accepts the package.

**Is third party approval for termination/ termination documents required?**
Yes. The Labour Commissioner must approve the redundancy or retrenchment exercise in writing. Where the termination takes place without the approval of the Labour Commissioner this will be deemed and unfair termination.

**What notice periods are applicable?**
A month's notice is applicable, however the Labour Commissioner may determine the notice period applicable in certain circumstances.

## Termination benefits

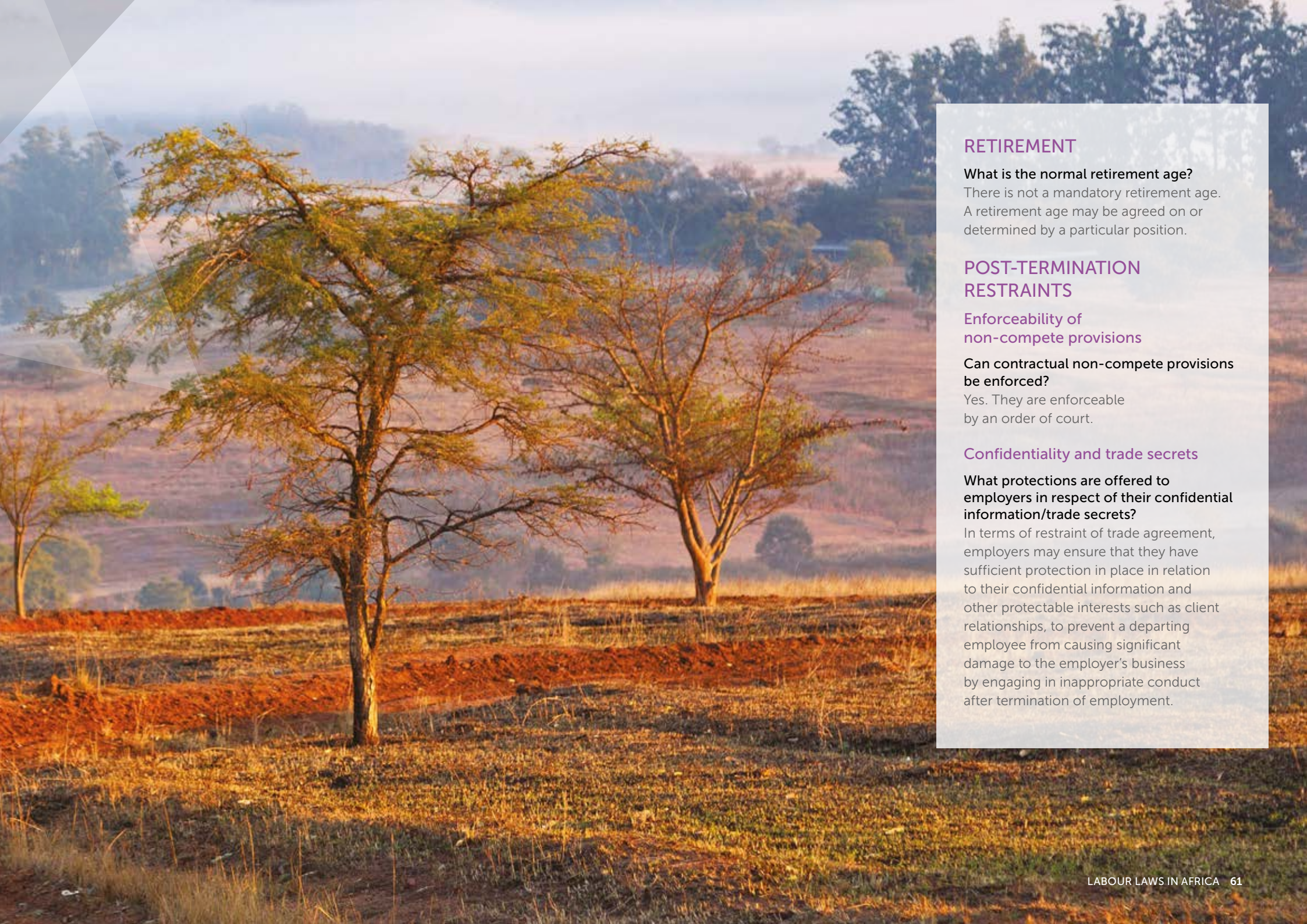
**Are any termination benefits payable in the event of a dismissal for misconduct, incapacity or operational requirements?**
Where the termination is substantively fair there are no benefits payable, however, where the termination for misconduct, incapacity or operational requirements is found to be substantively unfair, the employee will be entitled to:

- notice pay;
- additional notice pay;
- severance allowance; and
- leave pay due to them.

**Are any termination benefits payable in the event of voluntary resignation by an employee?**
There are no benefits payable.

**Are any termination benefits payable in the event of retirement?**
The employee will be entitled to the pension due to them at the time of retirement. There are no benefits payable upon retirement in terms of the statute.

**THERE IS NOT A MANDATORY RETIREMENT AGE.**



## RETIREMENT

**What is the normal retirement age?**
There is not a mandatory retirement age. A retirement age may be agreed on or determined by a particular position.

## POST-TERMINATION RESTRAINTS

### Enforceability of non-compete provisions

**Can contractual non-compete provisions be enforced?**
Yes. They are enforceable by an order of court.

### 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 sufficient protection in place 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.

# ETHIOPIA

| | |
|---|---|
| Official language(s): | Amharic |
| Population (approx.): | **129 million** |
| Unemployment rate (2024): | **3.4%** |
| Name of court for labour matters: | • Labour Division of the Regional First Instance Court<br>• Labour Division of Appellant Court<br>• 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. 1156/2019 (Labour Proclamation)
- Workers Reduction Directive No. 43/2013
- Foreign Employees Work Permit Directive No. 44/2013
- Overseas Employment Proclamation No. 1246/2021 (Overseas Employment Proclamation)
- Termination of Employment Convention No. 158 (Termination Convention)
- Right to Organise & Collective Bargaining Convention No. 98 (Right to Organise & Collective Bargaining Convention)

### Regulatory rating

*Heavily regulated.*

# Mesfin Tafesse and Associates (MTA)

Mesfin Tafesse is the founder and Principal Attorney of MTA. He has over 30 years of legal experience in the private, public, and civil society sectors in Ethiopia.

He has an LLB from Addis Ababa University and an LLM from University of London. Mesfin has substantial experience representing multinational investors in sectors including power and energy, banking and finance, M&A, oil and gas, infrastructure and employment matters. Mesfin is recognized by Chambers & Partners as Band I legal service provider and also in Legal 500 and ILFR.

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**Mesfin Tafesse**
Principal Attorney

## TRENDS

### General

Ethiopia continues to focus on increasing formal employment and enhancing the rights and protection of workers. This includes an emphasis on improving labour relations, workplace safety and compliance with international labour standards. Current labour law reforms are aimed at making the labour market more flexible while protecting workers' rights, thus attracting more foreign investment by creating an increasingly business-friendly environment.

Looking ahead, Ethiopia may see further refinements in its employment laws to align more closely with international practices, especially in areas like occupational health and safety, privacy in the workplace, and the use of technology such as artificial intelligence (AI) in employment practices.

### The introduction of artificial intelligence in the workplace

The draft national AI policy document reflects a strategic approach to adopting AI in the workplace in Ethiopia. It outlines the Government's vision to use AI as a catalyst for innovation and efficiency. A major focus of this policy is workforce development. Recognising the potential disruption AI could bring to the labour market, the policy advocates for robust training programmes to upskill workers. The goal is to ensure that the workforce is prepared for AI-enhanced roles, thereby mitigating job displacement risks. Programmes are tailored to equip employees with the necessary skills to thrive in an AI-driven workplace, focusing on digital literacy, AI programming and data management.

The introduction of AI in the workplace introduces significant ethical considerations. The draft policy addresses these by proposing strict governance structures to oversee AI deployment. The governance framework aims to protect workers from potential biases and ensure that AI technologies are used responsibly and ethically.

The policy also acknowledges challenges such as the need for substantial investment in AI infrastructure, potential resistance from the workforce, and the complexities of implementing legal and regulatory frameworks. The future direction focuses on continuous evaluation and adaptation of AI strategies to ensure they align with national development goals and the dynamic nature of technology.

### Data protection and privacy

Data protection and privacy are becoming increasingly important in the labour sector in Ethiopia, especially in light of the country's burgeoning digital transformation initiatives. The integration of AI and other digital technologies in the workplace necessitates a robust framework for handling personal and sensitive data to ensure compliance with ethical standards and safeguard employee rights.

In the workplace, the introduction of digital systems for human resource management, employee monitoring and performance evaluations raises critical concerns about employee privacy.

Employers are increasingly adopting technologies that collect data on their employees, from biometric systems for attendance tracking to software monitoring employee computer usage.

As Ethiopia accelerates its digital infrastructure, the legislative framework governing data protection is a focal point. The recent ratification of the Personal Data Protection Proclamation (PDPP) marks a significant step for Ethiopia in regulating data protection and privacy in the labour sector and beyond. Enacted as Proclamation No. 1321/2024, this legislation establishes a robust legal framework aimed at safeguarding personal data within Ethiopia's burgeoning digital economy.

The proclamation delineates the responsibilities and duties of entities that handle personal data, emphasising the importance of lawful and fair processing. It mandates the implementation of appropriate security measures to protect data against unauthorised access and requires entities to report any data breaches to the Ethiopian Personal Data Protection Commission, which is to be established to oversee and enforce the data protection regulations. Under the PDPP, individuals are granted significant rights over their personal data. These rights include access to their data, the ability to rectify inaccuracies, and the right

to object to data processing under certain conditions. The proclamation also stipulates that individuals must give informed consent for their data to be processed, reinforcing the control that individuals have over their personal information.

## Remote working and its implications for the payment of taxes where employees work from another jurisdiction

The Labour Proclamation emphasises the need to create a flexible yet regulated work environment, suitable for modern business practices; potentially including remote work arrangements. The proclamation addresses "*home work contracts*", with the understanding that this is a contract where a natural person habitually performs work, for an employer, in their own home or any other place freely chosen by them in return for wages without any direct supervision or direction by the employer. However, it does not specifically address the nuances of remote working across different jurisdictions.

Under the Federal Income Tax Proclamation No. 979/2016, Ethiopian residents are liable for taxes on their worldwide income, whereas non-residents are taxed only on their Ethiopian-sourced income. This distinction is crucial for remote workers, as their tax liability in Ethiopia would depend on their residency status and where their income is considered sourced. For employees working remotely from another jurisdiction, key questions arise about where their income is sourced – whether it remains Ethiopian-sourced or is considered to originate from where they are physically working. If an Ethiopian company employs a remote worker living abroad, the source of the income could still be deemed Ethiopian, depending on the specifics of their role and responsibilities.

# HIRING DECISIONS

## Pre-hire checks

**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 is 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/AIDS is excluded from the ambit of section 14(2)(d) of the Labour Proclamation.

## Hiring options

**What hiring options are available to employers?**

The following hiring options are available to employers:

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

**Are fixed-term contracts 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, may be concluded for a period not exceeding 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.

**Is there a concept of dual employment or deemed employment in Ethiopia? In what instances would this apply?**

Under Ethiopian law, parties have the autonomy to negotiate contracts that create, alter or dissolve property rights, including employment agreements. This flexibility extends to employment arrangements governed by the Labour Proclamation, which permits employees to work for multiple employers if legally compliant. However, securing the prior employer's consent is crucial, as undisclosed dual employment can be seen as deceptive, potentially leading to contract termination. Tax obligations for employees of foreign entities necessitate self-withholding and reporting of taxes. Thus, dual or multiple employment is permissible, subject to adherence to legal frameworks and explicit consent from current employers.

## 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.

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

## 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 or a statement of employment within 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 zero-hour contracts permissible (contracts without a minimum set of working hours or any basic salary undertaking)?**
Under Ethiopian labour law, employment contracts must detail the type of employment, workplace, wage rate, calculation methods, payment manner and intervals, and contract duration, despite the lack of a regulated minimum wage in the private sector. The proclamation also caps the work week at 48 hours, standardising a maximum of eight hours per day. The distribution of hours can be adjusted based on the work's nature but cannot exceed 10 hours per day. Overtime is regulated and compensated accordingly. Given these regulations, zero-hour contracts, which lack guaranteed hours or a basic salary, are not permissible.

### Probation

**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 their suitability for a role. Where parties agree to a probation period, the agreement must be reduced to writing, may not exceed 60 working days, beginning from the first date of employment, 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. contracts for 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 USD 21 per month.

**What are the maximum working hours?**
Employees may work a maximum of 48 hours a week and eight 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 additional hours in excess of the maximum eight-hour working day.

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

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

**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:

- An accident – actual or threatened
- *Force majeure*
- Urgent work
- Substitution of absent employees assigned on work that runs continuously without interruption

Overtime shall not exceed two hours a day, 20 hours a month or 100 hours in a year. Payment for overtime work shall be affected on the day fixed for wage payday. Overtime is payable as follows:

- For work performed between 6h00 and 22h00 – 1.25 times the employee's ordinary hourly rate.
- For work performed between 22h00 and 6h00 – 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.
- 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 are the weekly rest and public holidays requirements?**
The legislated weekly rest period is a minimum of 24 hours in every seven-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 their 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 days in the first year of service.
- Fourteen days plus one 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 months of sick leave in any 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.

**What are the minimum requirements relating to parental leave?**
A female employee is entitled to 30 consecutive days of maternity leave before the birth of a child and 60 consecutive days of 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 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 unpaid consecutive leave days 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 employee?**

Terms and conditions of employment not specified by the Labour Proclamation may be modified by collective agreement or work rules drafted in accordance with the Labour Proclamation, or by written agreement between the parties.

**THE REMEDIES AVAILABLE ARE EITHER REINSTATEMENT, COMPENSATION FOR UNLAWFUL TERMINATION OR SEVERANCE PAY.**

## 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 occurs as a result of the fault of the employer. In addition, where an employee sustains employment related injuries, the employer shall cover the following expenses: (i) general and specialised medical and surgical care; (ii) hospital and pharmaceutical care; and (iii) any necessary prosthetic or orthopaedic devices.

### Return to work

**Are employers obliged to reintegrate employees into the workplace after having recovered from workplace injuries?**
This is not outlined in the 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.

**Do employees who work remotely from a foreign jurisdiction and pay taxes in their country of residence, require an Ethiopian work permit to render services to an Ethiopian entity?**
Under Ethiopian labour law, foreigners are required to obtain a work permit from the Ministry of Labour and Social Affairs to be employed in any type of work within Ethiopia. This requirement applies primarily to those relocating to and performing work within the country.

However, for foreigners who will perform their work remotely from outside Ethiopia, a work permit is not necessary. They can render services to an Ethiopian entity without needing to comply with the work permit regulations that apply to in-country employment, provided they pay taxes in their country of residence and adhere to the legal frameworks there.

## Other social benefits

**What are other social benefits contributions must be made?**
Employees must make contributions to the Pension and Social Security Authority.

**Statutory payments the employer is required to make to the government in relation to employees**
In relation to its employees, an employer is duty bound to withhold employment income tax and make a contribution for social benefits (pension contribution).

**Income tax:** Employers must deduct employment income tax from employees' monthly income and pay it to Ethiopian Ministry of Revenues. Please refer the following table to for the tax rates:

| MONTHLY EMPLOYMENT INCOME IN ETHIOPIAN BIRR | EMPLOYMENT INCOME TAX RATE |
|---|---|
| 0–600 | 0% |
| 601–1,650 | 10% |
| 1,651–3,200 | 15% |
| 3,201–5,250 | 20% |
| 5,250–7,800 | 25% |
| 5,251–10,900 | 30% |
| Over 10,900 | 35% |

**Social security (pension contribution):** The employer must deduct a pension contribution (7%) from an employee's monthly salary and pay it, together with its own contribution (11% of the employee's gross salary) to the pension fund.

**Unemployment insurance:** There is unemployment insurance payment required in Ethiopia.

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

## Skills development

**What are the legislative frameworks to support workforce skill development?**
The Labour Proclamation is silent with regard to skill development and learnership programmes, so it will be governed by the internal policy of the organisation and collective agreements (agreement on condition of work concluded between an employer and a representative of the employees).

However, when it comes to termination of a contract by an employer because of loss of capacity to perform the work, the employer must prove the employee's refusal or inability to make use of training opportunities arranged to upgrade their skills or, after having been trained, the inability to apply the necessary skills. Accordingly, employers should arrange training programmes to improve their employees' skills, particularly if they intend to terminate the employment contract by relying on loss of capacity to perform the necessary work. Moreover, the employer must take the necessary measures to provide training programmes and training materials for persons with disabilities.

**Legal requirements and entitlements in relation to trade unions and workers' associations?**
Workers are entitled to form an association or trade union in organisations with 10 or more workers. However, the number of members of the association must be at least 10. Accordingly, a minimum of 10 workers who are members are required to form a workers' association.

**Registration:** Trade unions must be registered with the Ministry of Labour and Skills to acquire legal personality. A trade union must apply for registration, and should submit the following documents with its application:

- By-laws of the association.
- Names, addresses and signatures of its members and leadership.
- Name and emblem of the association.

After examining the completed documents, if the registration is approved, the Ministry of Labour and Skills will issue a certificate of registration to the trade union within 15 working days.

**Organisational rights:** A registered trade union has the power to observe conditions of work, protect the rights and interests of its workers, and participate in matters affecting the interest of its members.

**Entitlement to represent employee:** A trade union can represent its members in the workplace, particularly during collective bargaining (a negotiation process between an employer and a workers' association about conditions of work). Moreover, a trade union can also represent workers in any labour disputes before the competent body when requested by the members.

## Affirmative action

**What are affirmative action obligations of the employer, and what need to be done for its compliance?**
As well as adhering to provisions regarding the treatment of young people, women, people with disabilities and pregnant women, an employer must observe the following affirmative action obligations.

**In connection to women:** Whenever a woman receives an equal grading to a man when competing for employment, promotion or any other benefit, priority must be given to her.

**In relation to persons with disability:** Unless the nature of the work dictates otherwise, where a person with a disability acquires the necessary qualification and gets an evaluation score that is equal or close to that of other candidates, preference shall be given to the person with a disability. This preference applies to recruitment, promotion, placement, transfer and participation in training programmes (locally or abroad).

**WHERE A CONTRACT OF EMPLOYMENT IS TERMINATED DUE TO OPERATIONAL REQUIREMENTS, AN EMPLOYEE IS ENTITLED TO SEVERANCE PAY.**

## DATA PRIVACY

**What data privacy (if any) obligations rest on employers in respect of their employees?**
With the recent ratification of the Personal Data Protection Proclamation, Ethiopia has established specific legislation concerning the protection of personal information. The provisions aim to safeguard personal data against unauthorised access, disclosure or misuse, aligning with international data protection standards. This legislative framework replaces the previously more general references to data protection scattered across various laws such as the Constitution, 1995, the Criminal Code, 2005, and other related proclamations. This development represents a significant step towards strengthening data privacy and security measures in Ethiopia, particularly in the context of employment, where sensitive personal data is frequently handled.

## 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.

## TERMINATION OF EMPLOYMENT

Contracts of employment may be terminated by either party in accordance with the provisions of the law, through 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.

### Termination for misconduct

**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 warnings.
- Absence from work without good cause for a period of five consecutive working days, 10 working days in any one-month period, or 30 working days in a year.
- Deceitful or fraudulent conduct in carrying out duties, depending on the gravity of the case.
- Misappropriation of the property or funds of the employer with intent to gain undue enrichment for themselves or a third party.
- Output which, despite the employee's potential, is persistently below the quality and quantities stipulated in the collective agreement or determined by the agreement of the two parties.
- Being responsible for fights or conflict at the workplace, depending on the gravity of the case.
- Conviction for an offence where such conviction renders the employee unsuitable for the post which they hold.
- Intentionally causing damage or causing damage 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 them of imprisonment for more than 30 days.
- 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 month in the case of an employee who has completed their probation and has a period of service not exceeding one year.
- Two months in the case of an employee who has a period of service of more than one year.
- Three months in the case of an employee who has a period of service of more than nine years.
- Two months in the case of an employee who has completed their probation period and whose contract of employment is terminated by reason of the reduction of the employers' workforce.

## Termination for incapacity

**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 month in the case of an employee who has completed their probation and has a period of service not exceeding one year.
- Two months in the case of an employee who has a period of service of more than one year.
- Three months in the case of an employee who has a period of service of more than nine years.

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

**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 court of first instance.

**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.

## Termination for operational requirements

**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 month's notice of the intended terminations.

**Is it permissible to offer employees a voluntary separation package during a redundancy process? Does this undermine the legitimacy of the retrenchment/ redundancy process?**
Under Ethiopian labour law, employment contracts may be terminated by the employer or the employee, or through mutual agreement, as long as the terms align with the provisions of the law and any relevant collective agreements, or through direct agreement between the parties involved. However, any waiver of legal rights by the employee during this period is considered legally void to protect employees from potentially coercive practices. When termination is agreed upon, it must be formalised in writing to be legally binding.

Furthermore, the law allows employers to terminate an employment contract with proper notice if the employee's position is permanently abolished due to valid reasons and no alternative position is available. This framework supports the legality of voluntary separation agreements, ensuring they are conducted with full consent and formal recognition, thus preserving the rights and duties outlined in the labour legislation.

**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 court of first instance.

**Employee remedies?**
Reinstatement or compensation.

**Third-party approval for termination/ termination documents?**
This is not provided for in law.

## Termination benefits

**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 the employee's average daily wage for the last week of service multiplied by 60; or
- either 30 times the 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 year), or, in the case of an employee who has served for more than one year, payment shall be increased by one-third of the aforementioned sum for every additional year of service, provided that the total amount does not exceed 12 months' wages.

**How is severance pay calculated?**
The calculation of severance pay is as follows:

a. For an employee who served for one year – 30 times the average daily wage of the final week of employment.
b. For employees with a service of less than a year – the payout will be calculated in proportion to the period of service.
c. For employees who have served for more than a year – payment shall be increased by one-third of the amount stated in (a) for every additional year of service, however the total amount should not exceed 12 months' wages of the employee.

The Labour Proclamation further provides that for termination due to permanent cessation of operation of an undertaking and a reduction of workforce, the employee shall be paid an additional amount equivalent to the employee's average daily wage of the last week of service, multiplied by 60.

## RETIREMENT

**What is the normal retirement age?**
The normal retirement age is 60, however employees may retire at 55.

**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.

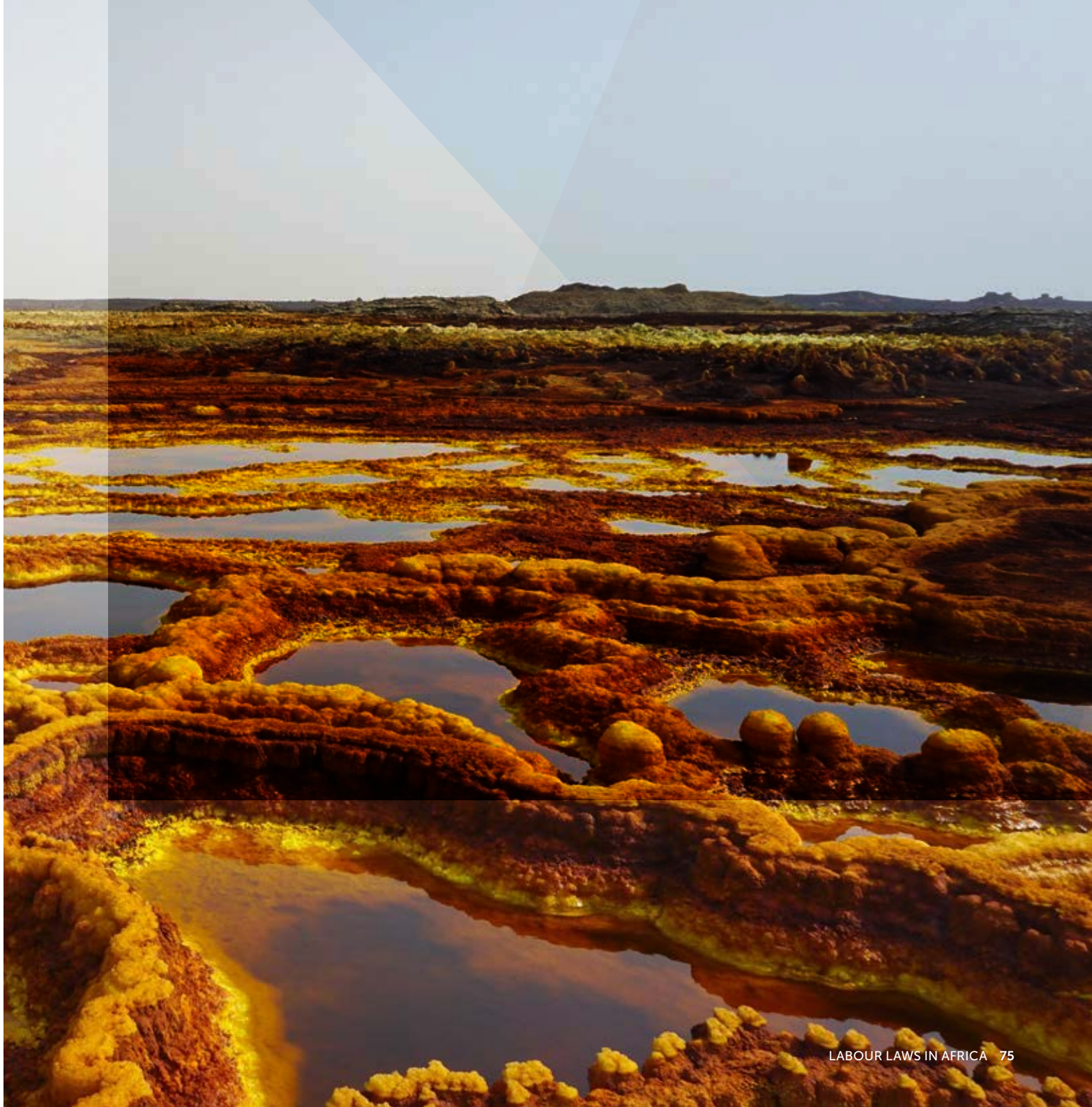
## POST-TERMINATION RESTRAINTS

### 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 confident 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.): | **6,56 million .** |
| Unemployment rate (2024): | **19.9%** |
| Name of court for labour matters: | The Labour Court has jurisdiction to handle any dispute related to labour law; in the event of an appeal, the case is brought before the Court of Appeal and then the Supreme Court |
| Are pre-employment checks permissible? | In principle, hiring is free, however, employment contracts for foreign workers and contracts involving the expatriation of a Congolese employee are subject to an approval (visa) procedure |
| 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 Code du travail Loi No. 45-75 du 15 mars 1975 (Labour Code)
- Social legislation in the Republic of Congo is governed by Law No. 6-96 of 6 March 1996, amending and supplementing certain provisions of Law No. 45/75 of 15 March 1975, which established the Labour Code, as well as the implementing text of the Labour Code through Order No. 1108 and Decree No. 70 concerning the regulation of overtime hours.

### Regulatory rating

*Heavily regulated.*

# Cabinet d'Avocats PETRO

**Cabinet PETRO succeeded Cabinet CARLE following a transfer effective on January 1st, 2021. It succeeded the firm of Maître MARIANNE, which had succeeded Maître VIGUIER based in Pointe-Noire in the 1950s.**

**Maitre Jean PETRO**

The referent of the Law Firm is Maître Jean PETRO, Lawyer at the Bar of Pointe-Noire since 1982, Former President of the Bar Association of Congo and former President of the International Conference of Bars with a Common Legal Tradition (CIB) which brings together the bars of the 53 French-speaking countries.

He is also an arbitrator for the Organisation for the Harmonization of Business Law in Africa (OHADA), an organisation comprising 17 African countries (15 French-speaking countries plus Equatorial Guinea and Guinea Bissau).

With a team of three qualified lawyers, a tax advisor, two customs advisors and legal assistants, Cabinet PETRO is one of the largest law firms in Congo Brazzaville, with correspondents all over the world. It also has a large administrative and secretarial staff.

It is ranked number 1 in the "*Chambers & Partners*" and Legal 500 rankings.

Its clientele is essentially made up of private national companies under Congolese law, multinational companies, banks and international organisations such as the IMF and the World Bank.

Thanks to its network of international correspondents, the Firm ensures effective representation of its clients' interests.

Most of our activities in Congo Brazzaville are dedicated to multinational companies operating in the country, particularly in the banking, forestry, maritime, energy, construction, oil and mining sectors.

We are also involved in assisting foreign legal entities wishing to set up in Congo-Brazzaville.

To this end, we provide legal advice, help set up entities under Congolese law, draft commercial contracts, assist our clients with due diligence and project financing in Congo, in all areas of activity.

**Contact:** avocats@jplawfirm102.com

## TRENDS

### General

Article 2 of the Labour Code on the definition of the employment contract between the employer and the employee

### Data protection and privacy

Article 9 of the Civil Code and Law No. 27-2020 of 5 June 2020, on the fight against cybercrime and the protection of personal data.

### Remote working and its implications for the payment of taxes where employees work from another jurisdiction

In principle, taxes are only levied on Congolese nationals.

### Other trends:

Any foreign company wishing to establish itself in Congo must first make use of Congolese labour.

## HIRING DECISIONS

### Pre-hire checks

**May employers conduct pre-hire checks?**
This is 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
- indefinite period contract.

**Is there a concept of dual employment or deemed employment in the Republic of Congo? In what instances would this apply?**
Not regulated.

### Immigration

**Do foreign employees require permits to work and which visas may be obtained to allow foreigners to work?**
Yes. In accordance with the regulations of the Direction generale de l'office national de l'emploi et de la main-d'oeuvre (ONEMO) and Agence Congolaise pour la Création des Entreprises (ACPCE), and Article 33 of the Labour Code, 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?**
Employment contracts are required in accordance with Articles 2 and 32 of the Labour Code.

**Are there any formality requirements attached to employment contracts, e.g. written format and/or signed?**
Yes. A fixed-term employment contract is required in writing as the latter is subject to particular indications. Temporary work employment contracts must also be concluded in writing at least within two business days of the employment of services.

**Are zero-hour contracts permissible (contracts without a minimum set of working hours or any basic salary undertaking)?**
Yes, in accordance with Articles 34 to 36 of the Labour Code.

### Probation

**Can a probation period be used, and if so, is there a maximum prescribed period of probation?**
Yes. In practice, a probation period may be used for a period of up to six months for open-ended contracts.

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?**
Yes. Certain employees of the administration are excluded, including 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.

The minimum wage (SMIG) is currently XAF 70,400 per month, effective from 1 January 2025, according to the report from the Council of Ministers meeting held on Friday, 8 November 2024.

**MINIMUM WAGE (SMIG) IS NOW SET AT 70,400 XAF PER MONTH**

**EMPLOYEES ARE NOT ENTITLED TO AN AUTOMATIC SALARY INCREASE.**

**What are the standard/maximum working hours? Are there prescribed minimum resting periods during the normal working day/week?**
Yes. According to Article 105 of the Labour Code, 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 must be for a minimum of 24 hours per week and usually falls on a Sunday.

**What are the minimum requirements relating to overtime?**
Article 20 of Decree No. 1978-360 of 12 May 1978, sets the duration of work, regulates overtime hours, and outlines the terms of their compensation.

Specific decrees will determine the maximum duration of overtime that 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?**
Yes. According to Article 119 of the Labour Code, 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 based on the employee's seniority 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?**
The sick leave period is provided for under Article 119 of the Labour Code. This period may not be deducted from the legal leave days granted to each worker. However, when sick leave exceeds six months, the employer has the option to terminate the employment contract with the ill employee due to health reasons.

**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 their 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 nursing her 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)?**
In accordance with Article 119, paragraph 6 of the Labour Code, this type of leave takes the form of a special permission granted to the worker by the employer. This permission is for 10 paid days. If it exceeds 10 days, the additional days are deducted from the employee's annual leave entitlement.

**Are employees automatically entitled to bonus payments?**
Employees are not automatically entitled to bonuses, they are granted depending on the applicable collective agreement or the individual employment contract.

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.

**What statutory payments is an employer required to make to the government in relation to employees, including deductions from employees' salaries and employer contributions, such as unemployment insurance to cover periods of unemployment?**
In accordance with Article 100 of the Labour Code and Article 1 of the General Tax Code. However, there is no unemployment insurance in the Republic of Congo.

**Are employees automatically entitled to periodic increases, alternatively how do the parties normally achieve consensus on increases?**
Article 20 of Decree No. 1978-360 of 12 May 1978 sets the duration of work, regulates overtime hours and outlines the terms of their compensation. Hours worked beyond the standard duration of work will lead to a corresponding increase in salary. However, employees are not automatically entitled to any periodic increases.

**Can employment terms be changed without achieving agreement with the employees?**
The consent of both parties (the employer and employee or the employee's representative) is required, in accordance with Article 1108 of the Civil Code, which provides that the consent of a contracting party is necessary for the validity of a contract.

**Are employees commonly represented in their interactions with employers relating to changes to employment terms?**
Yes. Employees can be represented by trade unions, in accordance with Article 184 of the Labour Code. Many workers are affiliated with the Congolese Trade Union Confederation.

**What are the legal requirements concerning trade unions and worker organisations, including registration obligations, organisational rights, and entitlements to represent employees in the workplace?**
All requirements regarding trade unions are outlined in Articles 186 to 191 of the Labour Code.

## SOCIAL BENEFITS, TAX AND PENSIONS

### Workplace injuries

**In the event of workplace injury/disease, will employees be entitled to some form of compensation?**
Yes. In accordance with Articles 73, 86, and 87 of the Social Security Code, 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, at the usual intervals, compensation equal to the amount of their remuneration for the duration of their absence.

### Return to work

**Are employers obliged to reintegrate workers into the workplace after having recovered from workplace injuries?**
Yes. In accordance with Article 84 of the Social Security Code.

### 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. 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?**
Under Congolese law, employers are obliged to deduct income tax (the amount varies depending on the employee's salary) from an employee wages and remit it to the tax authority. This also applies to foreign employees.

### Skills development

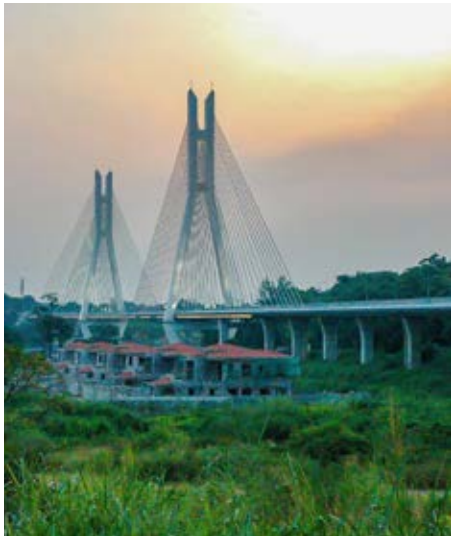
**What legislative frameworks exist to support workforce skills development, including strategies for upskilling, learnership provisions, financing for skills development, and the regulation of employment services?**
Under Congolese law, the employer is required to contribute to the development of their employees' skills, in accordance with Article 168 of the Labour Code.

### Affirmative action

**What affirmative action obligations do employers have under the law, and what measures must they implement to ensure compliance?**
Under Congolese law, the employer is required to ensure equal rights for all employees, regardless of their origin, gender, age or status, in accordance with Article 80 of the Labour Code.

**THE EMPLOYER IS RESPONSIBLE FOR 1% TO 40% OF THE INCOME TAX RATE (IRPP).**

**THE REGIONAL DIRECTOR OF LABOUR SHALL CONVENE A COMMISSION OF DISPUTES WITHIN 15 DAYS AFTER THE FILING OF THE APPLICATION**



### 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. Specific social benefits depend of the relevant collective agreements.

## DATA PRIVACY

**What data privacy obligations (if any) rest on employers in respect of their employees?**
Congolese law provides for the protection of employees' confidential data, in accordance with Article 9 of the Civil Code and Law No. 27-2020 of 5 June 2020, on the fight against cybercrime.

## BUSINESS TRANSFERS

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

The Congolese Labour Code stipulates that in the case of a business transfer, the employer is required to inform the employee representatives of the company, in accordance with Article 170, paragraph 1, and Article 177 of the Labour Code.

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

Under Congolese law, there are cases where employers are jointly responsible, particularly in the context of subcontracting contracts, as provided by Article 73-8 of the Labour Code.

**Is it possible to change terms and conditions of employment in the context of a business transfer?**
The employer does not have the right to unilaterally modify the employee's employment contract in the event of a business transfer, as all contracts remain valid, in accordance with Article 45, paragraph 1 of the Labour Code and Article 1108 of the Civil Code.

**What are the consequences in the event of non-compliance?**
In the event of non-compliance, the contract shall be null and void, in accordance with Article 1108 of the Civil Code, which sets out the conditions for the validity of a contract.

## TERMINATION OF EMPLOYMENT

**What are the statutory obligations and procedures for terminating a contract of employment?**
A fixed-term employment contract may be terminated for the following reasons:

- expiration of the contract term;
- gross misconduct or force majeure;
- termination initiated by the employer or by the employee; or
- in accordance with Article 37 of the Labour Code.

An open-ended employment contract may be terminated for the following reasons:

- at the will of either party;
- in the event of gross misconduct;
- upon the death of the employee; or
- in accordance with Article 39 and subsequent articles of the Labour Code.

The procedure for terminating a fixed-term or open-ended contract due to misconduct is:

- Letter requesting an explanation, and if the explanation is not satisfactory:
  - suspension of the contract to allow the employee to present their defence;
  - if the employer is not convinced by the employee's defence;
  - notification via a dismissal letter; and
  - issuance of a work certificate and final settlement (in some cases, gross misconduct may result in the loss of entitlement to compensation).

## Termination for misconduct

**What fair process requirements exist?**
The procedure for terminating a permanent contract due to misconduct is:

- A written request for explanation is sent to the employee, and if the explanation is not satisfactory:
  - suspension of the employment contract for 30 days;
  - presentation of the employee's defence (the employee has the right to be assisted by a person of their choice, in accordance with Article 41 of the Labour Code);
  - if no agreement is reached between the parties, the employer will notify the employee of the dismissal by sending a dismissal letter; and
  - Delivery of the work certificate and final settlement (in some cases, gross misconduct results in loss of entitlement to severance pay, as stated in Article 46 of the Labour Code).

The termination of a fixed-term contract, whether for gross misconduct or due to the contract term's expiration, is provided for under Article 37 of the Labour Code. It is only legal in the case of gross misconduct by the employee and this procedure follows specific rules.

**What substantive fairness requirements exist?**
Dismissal must strictly follow the procedure laid out in Articles 37 and 41 of the Labour Code; otherwise, it is deemed irregular.

**What are the dispute resolution mechanisms?**
In the event of a dispute between an employee and an employer, either party can refer the matter to the Labour Inspectorate for resolution.

Following negotiations, the inspector will draw up either a **conciliation report** or a **report of non-conciliation.**

If either party is dissatisfied with the outcome rendered by the labour inspector, they may refer the dispute to the **Labour Court** for resolution.

The court first attempts **conciliation.** If the parties reach an agreement, the court issues a **conciliation act.** If not, it draws up a **non-conciliation act** and refers the case to a **full hearing on the merits.**

**What remedies are available to employees?**
Employees may bring their case before the Labour Court, in accordance with Article 211 of the Labour Code.

**Is third party approval for termination/ termination documents required?**
In cases of dismissal for economic or technical reasons, the opinion of the Departmental Directorate of Labour is required (Article 47 of the Labour Code) and the employees' representatives must also be consulted. However, in other cases of dismissal, the opinion of the Departmental Directorate of Labour is not always required.

## Termination for incapacity

**What fair process requirements exist?**
In accordance with the provisions outlined in Article 47 of the Labour Code, the employment contract may be suspended and may eventually be terminated.

**What substantive fairness requirements exist?**
In cases of illness, for an employment contract to be terminated, the employee's illness must have lasted more than six months.

**What are the dispute resolution mechanisms?**
Disputes may be settled before the Labour Court. The court will initiate a conciliation process. If conciliation fails, it issues a non-conciliation report to the parties and refers the case to a hearing on the merits. At that stage, the court may assess and determine whether the dismissal or action was lawful or not.

**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 immediately notify the Regional Director of Labour who shall, after assessing the facts or causes supporting the suspension, convene a commission of disputes within 10 days.

**What substantive fairness requirements exist?**
Yes, in accordance with Article 47-12 of the Labour Code, the opinion of the Regional Directorate of Labour is required.

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?**
The parties may agree to resolve their dispute through mediation. If mediation fails, the dispute can be referred to the Labour Court, as the Labour Court is the competent authority in social matters (Article 211 of the Labour Code).

**What remedies are available to employees?**
Yes. 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 immediately notify 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.

**Is it permissible to offer employees a voluntary separation package during a redundancy process? Does this undermine the legitimacy of the retrenchment/ redundancy process?**
Yes. It is possible to offer a severance package, and this does not affect the legitimacy of the dismissal, in accordance with Article 47 of the Labour Code.

## Notice requirements

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

## Termination benefits

**Are any termination benefits payable in the event of a dismissal for misconduct?**
No. Benefits are not automatically payable in cases of gross misconduct.

**Are any termination benefits payable in the event of a dismissal for incapacity?**
Yes. In accordance with Article 48 of the Labour Code.

**Are any termination benefits payable in the event of a dismissal for operational requirements?**
Yes. Where there is unemployment for economic or technical reasons, an employee receives monthly compensation equal to one-third of their categorical salary as well as their benefits 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.

**How is severance pay calculated?**
Where 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 dismissal.

**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?**
Yes. According to Congolese law, they are entitled to their old-age pension and all their accrued benefits.

## RETIREMENT

**What is the normal retirement age?**

The retirement age is set at 70, according to Law No. 48-2024 of 30 December 2024, which establishes the retirement age for workers governed by the Labour Code. The applicable retirement age for an employee can be incorporated into the employment contract or prescribed by the rules of the relevant pension fund scheme.

**THE RETIREMENT AGE IS SET AT 70 YEARS, ACCORDING TO LAW NO. 48-2024.**

## POST-TERMINATION RESTRAINTS

### Enforceability of non-compete provisions

**Can contractual non-compete provisions be enforced?**

Yes. An employee owes their entire professional activity to the employer, in accordance with Article 2 of the Labour Code.

It is, however, 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.): | **34m** |
| Unemployment rate (2024): | **2.8%** |
| Name of court for labour matters: | Labour Court and National Labour Commission |
| 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 work permit or immigrant quota permit |

## BACKGROUND

### Applicable legislation

- Labour Act, 2003 (Act 651) (Labour Act)
- Labour Regulations, 2007 (LI1833)
- Constitution of Ghana, 1992 as amended (Constitution)
- National Labour Commission Regulations, 2006 (L.1. 1822)
- National Pensions Act, 2008 (Act 766) as amended
- Workmen's Compensation Act, 1987 (PNDCL 187) (Workmen's Compensation Act)
- Data Protection Act, 2012 (Act 843)
- Immigration Act, 2000 (Act 573) (Immigration Act)
- Immigration Regulations, 2001 (LI 1691)

### Regulatory rating

*Heavily regulated.*

**Kimathi Kuenyehia, Sr**
Managing Partner,
Solicitor & Barrister

**Enid Baaba Dadzie**
Team Lead,
Technology Media and
Telecommunications

# Kimathi & Partners Corporate Attorneys

One of the largest law firms in Ghana, Kimathi & Partners is noted for preventing and solving difficult problems for global multinationals, developed countries and Fortune 500 companies doing business in Ghana.

We help our clients win their disputes, resolve their tax matters and close their difficult and most complex deals.

**Contact:** kimathi@kimathilegal.com

## TRENDS

### General

The labour laws and labour courts of Ghana, are usually sympathetic towards employees, because employers are deemed to have more bargaining power than employees. Unionisation of employees is currently on the rise as the labour laws of Ghana grant employees the freedom to join any union and prohibit employers from restricting the rights of employees to join trade unions. These trade unions have strong collective bargaining agreements which protect employees. Aggrieved employees are often represented by trade unions at the National Labour Commission hearings and the courts.

### The introduction of artificial intelligence in the workplace

The use of artificial intelligence (AI) in the workplace is gradually on the rise in Ghana. However, there is still a lot of progress to be made in terms of availability of the appropriate resources and requisite training of staff to maximize its use. It is typical for employees to use AI for research, while employers use AI to track the progress of work. Training and workshops are also gradually being organised by employers using AI tools.

### Data protection and privacy

Data protection and privacy is highly regulated in Ghana, and it is typical for employers to hire or have a data protection supervisor as part of the organisation, as is required by the Data Protection Act, 2012 (Act 843).

### Remote working and its implications for the payment of taxes where employees work from another jurisdiction

Remote working has been on the rise in Ghana since the COVID-19 pandemic, although it has not been fully incorporated by most employers. Under Ghanaian law, a non-resident person is subject to income tax where the income has a source in Ghana or where the income is connected with a Ghanaian permanent establishment. The law further provides that a payment in relation to or attributable to employment in Ghana, is sourced in Ghana regardless of the place of payment. (sections 3(2)(b) and 105(i) of the Income Tax Act, 2015 (Act 896), as amended). As such, where a person outside the country is working remotely for an employer in Ghana, payments made in relation to or attributable that employment will be deemed as sourced in Ghana, and the employer would be required to withhold tax on the employment income and remit it to the Ghana Revenue Authority. This is, however, subject to any double taxation treaties that may exist between the Ghana and the foreign country.

### Other trends

There is currently a draft Labour Bill, 2024 which seeks to revise and consolidate the laws relating to labour, employers, trade unions and industrial relations. It also seeks to incorporate the relevant international agreements and protocols on labour and international best practices. The bill is, however, yet to be passed by Parliament or assented to by the President, as required by the Constitution. The bill therefore has no immediate impact on the labour environment in Ghana but the developments in relation to the bill should be monitored.

## HIRING DECISIONS

### Pre-hire checks

**May employers conduct pre-hire checks?**
Employers may conduct pre-employment checks. The level of screening includes an identity check, a residential check, checking employment history (including restrictive covenants that may have been imposed on an employee in their previous employment), verification of education/professional licenses, confirmation of professional qualifications 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.

**Is there a concept of dual employment or deemed employment in Ghana? In what instances would this apply?**
Yes. Although the concept of dual employment is not widespread, there is no law prohibiting an employee from engaging in dual employment.

The law on social security recognises the concept of dual employment where it provides that for an employee concurrently employed by more than one employer, each employer is responsible for their obligations under the law.

There is also a concept of deemed employment in Ghana. Under Ghanaian law, an individual may be deemed as an employee of an entity if that entity determines the time and place; exercises strict control or supervision over the individual; or is mandated to provide work to the individual and the individual is obligated to accept and cannot reject the work. Another factor that may be considered by the courts in inferring an employment relationship is whether the individual's work is integral to the business of the entity as opposed to it being just an accessory to the business.

### Hiring options

**What hiring options are available to employers?**
Employers may hire employees on a permanent contract. Section 73 of the Labour Act provides that an employer may hire employees 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 section 78 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 a permanent worker. Temporary workers are entitled to benefits under the Labour Act such as minimum wage, hours of work, rest periods, paid public holidays, night work and sick leave, irrespective of the terms 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.

Employees may also be engaged on a fixed-term basis in terms of a fixed-term contract and would not be entitled to redundancy procedures and remedies for unfair termination.

## Immigration

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

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

A work permit or immigrant quota permit restricts the permit holder from engaging in any other employment, business, profession or occupation for a reward other than what is specified in their permit. In addition to their work permit or immigrant quote permit, a foreign employee requires a residence permit and may not commence work in Ghana without a residence permit. Local sponsors are not a requirement in Ghana.

**Are there any limitations placed on 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.

Sections 58 to 59 of the Labour Act provide that there are limitations on the employment of young persons. A young person is defined as any person of 18 years but below 21 years. These limitations include:

- Employers may not employ young people in positions that will expose them to physical or moral hazards.
- Young people may not be employed for underground mine work.
- Employers may not hire a young person to work unless a medical practitioner has certified that the young person is in good health and is medically fit to work.

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

## 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.

**Are zero-hour contracts permissible (contracts without a minimum set of working hours or any basic salary undertaking)?**

No. Ghanaian law requires an employment contract to include particulars such as the required standard hours of work and the rate of remuneration.

### Probation

**Can a probation period be used, and if so, is there a maximum prescribed period of probation?**
Yes. An employment contract may provide for a probation period.

The law does not provide for a specified period for probation, however, section 66(b) of the Labour Act refers to a "*reasonable duration determined in advance*" for probation. Probationary periods and conditions of probation are generally provided for in collective agreements. If a contract of employment requires probation as a condition for engaging an employee, the contract of employment has to specify the duration of the probation for the employee.

In practice, probation periods are set below six months (up to five months) to avoid an employee being confirmed as an employee while on probation for working with the same employer on the same job for six months or more.

### Minimum employment rights?

These are provided for in Part IV (sections 20 to 32) of the Labour Act, which regulates annual leave and sick leave provisions. There is also maternity leave for female employees (section 57 of the Labour Act).

**THE CURRENT MINIMUM WAGE, FROM 1 JANUARY 2024 IS GHS 18.15 (ABOUT $1.3) PER DAY.**

In addition, section 8 of the Labour Act provides for the rights of an employer. These include the right to employ, discipline, transfer, promote and terminate the employment of an employee. Section 10 of the Labour Act provides that the rights of an employee include the right to work under satisfactory, safe and healthy conditions; to receive equal pay for equal work without distinction of any kind; and to have rest, leisure and reasonable limitation of working hours and periods of holidays with pay, as well as remuneration for public holidays.

Further, employees have the right to join or form a trade union; to be trained and retained for the development of their skills; and to receive information relevant to their work.

**Are any employees excluded from minimum employment rights?**
Section 1 of the Labour Act excludes certain employees, including employees in the armed forces, police service, prison service and security and intelligence agencies.

Section 66 of the Labour Act also excludes fixed-term employees from asserting rights against unfair termination of employment and redundancy.

**Is there a minimum wage requirement?**
Although there is no separate minimum wage legislation, the National Tripartite Committee – which the Minister of Labour and employer and employee organisations are members of – determines the minimum wage. The current minimum wage, effective from 1 January 2024, is GHS 18.15 (about USD 1.3) 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. In practice, most employers grant a rest period or lunch break of one hour.

In addition, an employee must be given a rest period of 48 consecutive hours within every seven days of normal working hours.

**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, which then amounts to overtime. The employer is required to have rates of overtime payment. While section 35 of the Labour Act does not fix the rate of overtime remuneration, in practice, some organisations pay for overtime hours as follows:

- 100% of the usual hourly rate on weekdays.
- 50% of the usual hourly rates on weekends.
- 200% of the usual hourly rate on public holidays.

However, section 35(2) of the Labour Act does provide that an employee 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 a minimum of 15 working days of annual 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. The law 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 section 57 of the Labour Act. Maternity leave is on full remuneration for the period of leave. There is no provision for paternity 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.

**What statutory payments is an employer required to make in relation to employees, including deductions from employees' salaries and employer contributions, such as unemployment insurance to cover periods of unemployment?**
Under Ghanaian law, an employer is required to make the following statutory deductions from an employee's salary: social security contributions and income tax in the form of Paye-As-You-Earn (PAYE).

An employer is also required to deduct union dues for payment to the applicable trade union, where an employee is a member of a trade union, and compensate employees when a workplace injury occurs in the course of employment, except if the injury results from the employee's own wilful or negligent actions such as intoxication, deliberate self-harm, or false claims about their injury history.

## Social Security and National Insurance Trust contributions

An employer is required to make social security contributions in relation to the employment of the employee and to deduct the employee's social security contribution from their basic salary for payment to the relevant pension schemes.

The total contribution rate of an employee is 18.5% of their salary. Then, the employer must contribute the remaining amount of 13% of the employee's salary amount, as its own contribution; without making any deduction from the employee's basic salary.

These contributions are designed to provide retirement income security and ensure that employees who retire receive pension benefits from both the Social Security and National Insurance Trust (SSNIT), the first-tier mandatory pension scheme, and the relevant second-tier occupational pension scheme when due. It is the applicable pension schemes' responsibility (and not the employer's responsibility) to pay pension benefits to employees who are retired .

## Paye-As-You-Earn Tax

PAYE is the income tax deducted from an employee's income by the employer on behalf of the employee.

Under Ghanaian law, PAYE tax is applied to the chargeable income. An employee's chargeable income refers to the total income earned from their employment during a year of assessment, minus allowable deductions and statutory deductions, such as SSNIT contributions.

Employers are required to remit the PAYE withheld for each month to the Ghana Revenue Authority on behalf of their employees within 15 days of the next month.

The PAYE tax is graduated, meaning that the rates vary based on the employee's income level. For permanent employees who are tax resident in Ghana, the PAYE rate is determined by their monthly income.

The PAYE tax rate for casual employees differs from the progressive tax system. A casual employee is an employee engaged in seasonal or intermittent work for a period of no more than six months. For such employees, employers are required to deduct 5% of their earnings as PAYE. Casual employees are typically paid daily.

The chargeable income of non-resident individuals is generally taxed at a flat rate of 25%.

## Remittance of union dues for unionised employees

An employer is required to deduct and remit union dues for employees who are members of a trade union. If the trade union issues a formal notice, the employer must deduct union dues from the member employees' wages and remit the deducted amounts to the trade union as directed.

## Payments for occupational injuries

Employers are required to pay medical expenses for occupational injuries that occur in the course of work and compensate affected employees for the injuries sustained. However, compensation is not payable where the injury results from the wilful or negligent actions of the employee such as intoxication, deliberate self-harm or false claims about their injury history.

## Unemployment insurance

Employers in Ghana are not required to make provisions or statutory payments for unemployment insurance on behalf of their employees. Ghana does not currently have a mandatory programme for unemployment benefits.

## 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 and the profit of the company. Bonuses may form part of the terms of collective agreements. In the past, public servants were entitled to automatic increases, but this is no longer the case.

**Can employment terms be changed without achieving agreement with the employees?**
No. Employment terms may not be unilaterally changed unless there is a provision to that effect in the contract of employment. In all cases, the employee's consent is required to make changes to employment terms.

**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 may also be represented by a union representative when interacting with an employer.

**What are the legal requirements concerning trade unions and worker organisations, including registration obligations, organisational rights, and entitlements to represent employees in the workplace?**
The Constitution guarantees freedom of association, including the right of employees to form or join trade unions. The Constitution establishes the general right to association, and grants employees the freedom to join trade unions for the protection of their economic and social interests, including participation in collective bargaining. Additionally, Article 24(4) of the Constitution ensures that no employees can be forced to join or prevented from joining a trade union of their choice.

Further, under Ghanaian labour law, employees have the right to form and join trade unions for the protection of their economic and social interest. However, employees in certain roles, such as those in policymaking, managerial and decision-making positions, as well as agents of a shareholder of an undertaking and those in highly confidential positions, may be excluded from union membership. The classification of such employees is determined through an agreement between employers and employees, which takes into consideration, the organisational structures and job descriptions.

## Formation and registration of trade unions

A minimum of two employees employed within the same organisation have the right to form a trade union for the purpose of promoting and protecting their economic and social interests.

Similarly, two or more employers operating within the same industry or trade, each employing at least 15 employees, may establish an employers' organisation to represent their collective interests.

To gain legal recognition, both trade unions and employers' organisations must register with the Chief Labour Officer. This requires submission of a formal written application, accompanied by essential documentation, including the constitution, rules, names of officers and the official address of the union or organisation

Once registered, the trade union or employers' organisation is issued a certificate of registration, granting it legal status and enabling it to exercise the rights and powers conferred under the Labour Act.

These rights include the ability to engage in collective bargaining, represent members in employment-related matters, and affiliate with national or international organisations in pursuit of their objectives.

Two or more trade unions or employers' organisations may merge to form a single entity, provided the amalgamation complies with their respective constitutions or rules.

## Organisational rights and independence

Registered trade unions and employers' organisations are granted significant autonomy under the Labour Act, which enables them to function effectively in representing their members' interests.

These organisations have the right to draft and adopt their own constitutions and internal rules, elect their officers and representatives, and manage their administrative and operational activities without external interference.

They are also empowered to formulate their own programmes and policies, ensuring that they can advocate for employees' and employers' rights in alignment with their core objectives.

Additionally, trade unions and employers' organisations have the legal right to affiliate with national and international bodies, including federations of trade unions or employers' organisations, and actively participate in their lawful activities

However, to ensure their impartiality and protect them from external influence, trade unions and employers' organisations must remain independent. As such, they must not be financially, materially, or administratively controlled by any political party.

## Regulation of trade unions and employers' organisations

Trade unions and employers' organisations are required to establish clear rules governing their operations.

Key provisions include the official name and registered office of the organisation, its primary objectives and the qualifications for membership. The trade unions and employers' organisations must also outline the process for suspending or dismissing officers or members, the membership fees and subscriptions required, and the procedures for dissolving the organisation or amending its constitution.

Further, the rules must define the powers, functions, and responsibilities of union officers, ensuring that they act in the best interests of members. The Labour Department regulates trade unions and employers' organisations.

## Protection against discrimination

Trade unions and employers' organisations are legally required to uphold non-discriminatory principles in their governance and operations. These organisations cannot discriminate in their constitution, rules or membership on the grounds of race, place of origin, political opinion, gender, religion, creed or disability. Further, the Chief Labour Officer has the authority to refuse the registration of any trade union or employers' organisation that fails to comply with this non-discrimination requirement.

As such, where an organisation's constitution or rules contain discriminatory provisions, it must take corrective action within a specified period to ensure compliance before being granted legal recognition.

## Financial accountability and compliance

To ensure transparency, financial integrity and good governance, trade unions and employers' organisations are legally required to maintain accurate financial records and adhere to strict financial reporting obligations.

Additionally, a copy of the audited financial statements must be submitted to the Chief Labour Officer within seven months of the financial year end.

## Collective bargaining and representation

Trade unions play a crucial role in advocating for fair employment terms and conditions through collective bargaining. Registered trade unions have the legal right to negotiate collective agreements with employers or employers' organisations on behalf of their members. These agreements typically cover areas such as wages, working hours, benefits, health and safety standards, job security and dispute resolution mechanisms.

The Labour Act establishes the binding nature of collective agreements negotiated by trade unions. Once an agreement is concluded through a standing or joint negotiating committee, it applies to all employees within the specified category.

These agreements become legally enforceable as part of the employees' employment contracts, covering terms of employment.

Even after a collective agreement expires, its provisions remain in effect unless modified by mutual agreement or replaced by a new agreement. Employees cannot waive the rights granted under a collective agreement.

Further, if a trade union's certificate is withdrawn, any previously concluded collective agreement remains valid. However, where a new trade union negotiates a fresh agreement, it will supersede any prior agreements made by the previous union.

In cases where there is a conflict between the terms of a collective bargaining agreement and any other contractual arrangement, the collective agreement will take precedence, unless the alternative contract provides more favourable terms for the employee (***Kobeah and Others v Tema Oil Refinery; Boateng and Others v Tema Oil Refinery*** (Consolidated) [2003–2005] 1 GLR 485).

All parties involved in collective bargaining are required to negotiate in good faith and make every reasonable effort to reach an agreement. Both trade unions and employers must provide relevant information during negotiations, while ensuring confidentiality where necessary, and false or fraudulent representations are strictly prohibited. To conduct negotiations on behalf of employees, a trade union must apply for a collective bargaining certificate from the Chief Labour Officer. The certificate identifies the trade union as the official representative for a specific category of employees. If multiple trade unions exist at a workplace, the Chief Labour Officer determines which union holds the certificate.

A collective bargaining agreement applies to all employees within the specified category, regardless of union membership, and its terms are considered legally binding employment terms. They must remain in effect for at least one year and will automatically continue unless formally terminated or renegotiated. Additionally, every agreement must include provisions for dispute resolution. Where a trade union embarks on an action on behalf of its members, all such members are thereby bound whether they individually partook of the same or not (***Isaac K. Kobi and 24 Ors v Ghana Manganese Co. Ltd*** [2006] Jelr 66651 (SC)).

### Negotiation committees and collective bargaining

The Labour Act establishes the framework for negotiation between trade unions and employers to ensure fair employment terms. Trade unions and employers must appoint representatives to form a standing negotiating committee, which is responsible for conducting discussions on employment conditions, wages and other labour-related matters. These committees are empowered to create procedural rules and may delegate responsibilities to sub-committees.

All employment-related negotiations, including terms and conditions of employment, must be conducted through these committees. Either party can initiate negotiations by providing notice to the other, and any agreement reached must be documented in writing and submitted to the National Labour Commission and the Chief Labour Officer.

Trade union officers or members who are duly appointed by the trade union may also represent employees in negotiations. These representatives have the authority to require employers to enter negotiations on employment-related matters, and both parties are expected to make reasonable efforts to reach an agreement. Any agreements concluded must be in writing and signed by the negotiating parties.

## Social Benefits, Tax and Pensions

### Workplace injuries

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

Yes. The employer is required to pay medical expenses in respect of occupational injuries, as per section 4 of the Workmen's Compensation Act. Further, an employer is liable to pay compensation to an employee where the employee sustains personal injury by accident arising out of, and in the course of employment.

Where the injury results from an accident that is attributable to the employee having been under the influence of alcohol or drugs at the time of the accident, or results from deliberate self-injury or a false representation that the employee was not suffering or had not previously suffered from the same or a similar injury, the employee is not entitled to compensation.

The law generally provides for the payment of compensation where incapacity is caused by occupational diseases due to the nature of employment and contracted within a period of 12 months before the incapacity. Compensation for occupational disease is payable in the same manner as personal injury caused by an accident arising out of and in the course of employment.

## Return to work

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

Yes. Under Ghanaian law, an employee who is injured in the course of employment must not suffer a reduction in salary while undergoing treatment for the injuries sustained. This presupposes that the employee does not lose the employment contract as a result of injuries suffered in the course of employment.

According to section 50 of the Labour Act, if a person suffers disability during the course of their employment, attributable to workplace injuries or otherwise, the employer cannot simply terminate their 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.

**AN EMPLOYER IS MANDATED TO ENSURE THAT EMPLOYEES ARE REGISTERED UNDER THE NATIONAL HEALTH INSURANCE SCHEME.**

## 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?**

Per section 27(12) of the National Health Insurance Act, 2012 (Act 852), an employer is mandated to ensure that employees are registered under the National Health Insurance Scheme. Although the law does not mandate that employers must provide private medical insurance, in practice employers typically opt for private health insurance for their employees.

## 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 resident employees who earn above a certain threshold (currently GHS 490 (approximately USD 38) monthly) are liable to pay income tax at a graduated rate. Employers are thus obligated to deduct and withhold tax from their earnings and pay them over to the Ghana Revenue Authority on or before the fifteenth day of the month after which the deduction was made. Employers are additionally obligated to submit annual tax returns in respect of their employees. The current maximum tax rate is 35% for income exceeding GHS 50,000 (approximately USD 3,855) monthly. Non-resident employees are taxed at a flat rate of 25%.

**Do employees who work remotely from a foreign jurisdiction and pay taxes in their country of residence, require a Ghanaian work permit to render services to a Ghanaian entity?**

A Ghanaian work permit is not required to render services to a Ghanaian entity where the employee works remotely from a foreign jurisdiction and pays taxes in their country of residence. The Ghana Immigration Act stipulates that the requirement for a work permit is to enable a foreign national, who is lawfully resident, to work in Ghana unless the foreign national has been granted an indefinite residence status or a right of abode status.

## Other social benefits

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

In terms of section 70 of the Labour Act, an employer may deduct contributions towards the provident, pension or other fund agreed to by the employee.

Nevertheless, an employer is mandated to contribute to the mandatory pension schemes in accordance with the Ghana National Pensions Act. The law requires the employer to contribute a monthly pension amount of 13% of the employee's basic salary on behalf of the employee. This 13% contribution must not be deducted from the employee's salary. The employer is also required to deduct 5.5% of the employee's basic salary as the employee's own social security contribution. The employer would remit 13.5% of the total social security contribution to the first-tier pension scheme – the SSNIT – and remit the remaining 5% to the second-tier pension scheme – a recognised occupational pension scheme.

## Skills development

**What legislative frameworks exist to support workforce skills development, including strategies for upskilling, learnership provisions, financing for skills development, and the regulation of employment services?**

Under Ghanaian law, employers have a duty to develop human resources through training and retraining of employees. Likewise, employees have the right to receive training and retraining to enhance their skills and career growth.

The Government of Ghana has established the Ghana Skills Development Fund, an initiative that provides competitive grants to enterprises in both the formal and informal sectors to support skills development, job creation and business expansion by funding workforce training and technological upgrades.

Aligned with the Ghana Jobs and Skills Project (GJSP) and the Government's technical and vocational education and training policy, the fund prioritises micro and small enterprises, especially those with high growth potential, women-led businesses, and enterprises that employ persons with disabilities.

Further, the National Apprenticeship Programme, is also a training initiative by the Council for Technical and Vocational Education and Training, that provides funding for apprenticeship training, enabling informal sector employees to obtain certification. This initiative enhances skills development, ensures formal recognition of competencies, and improves employability and productivity in various trades.

## Regulation of employment services

Employment services in Ghana are regulated by the Ministry of Labour, Jobs and Employment, through the Labour Department, to ensure fair access to job opportunities and skills development programmes.

The law provides for Public Employment Centres (PECs) that assist in job placement, vocational guidance and workforce mobility. These centres facilitate the registration, training and retraining of both employed and unemployed individuals, including persons with disabilities.

In furtherance of the above, the Government of Ghana in 2024 constructed 16 new PECS in each of the regions under the GJSP.

In addition, private employment agencies must also be licensed to operate legally. These agencies can recruit employees for both local and international employment, provided there is a government agreement with the destination country. They are required to report quarterly employment data to the Ministry of Labour, Jobs and Employment, and failure to comply can result in the revocation of their license.

To protect job seekers, these agencies are required to refund 50% of fees if they fail to secure employment within three months.

## Affirmative Action

**What affirmative action obligations do employers have under the law, and what measures must they implement to ensure compliance?**

Under Ghanaian law, the rights of marginalised groups are safeguarded to prevent discrimination and promote fairness and equity. To ensure this, the law outlines specific affirmative action obligations for employers, including:

## Equality of employees

According to Article 17 (1 and 2) of the Constitution, all people are considered equal and are entitled to protection against all forms of discrimination.

Additionally, employers are obligated to ensure that all employees receive equal remuneration for equal work, without any form of discrimination or distinction (section 68 of the Labour Act). This obligation ensures fairness and promotes a workplace where all employees are compensated based on their work and qualifications, regardless of gender, disability or other personal characteristics.

## Gender equity

Under Ghanaian law, employers in the private sector are mandated to implement a gender equity policy and review it periodically, at least every four years, to ensure gender equity. The law also requires employers to develop the gender equity policy in consultation with employees and to include it in the employer's strategic plan.

To ensure compliance, the law requires employers to submit an annual gender equity report to the Gender Equity Committee (Committee). If the Committee determines that an employer has failed to adhere to its gender equity policy, it will mandate the employer to provide a written commitment to comply within six months. The Committee may also use alternative dispute resolution mechanisms to address issues of non-compliance.

Employers are also obligated to co-operate with the Ministry of Gender, Children and Social Protection by providing information on gender equity when requested.

Failure to co-operate without reasonable cause constitutes an offence, and the employer may face a fine ranging from 200 penalty units (GHS 2,400, approximately USD 154.6) to 500 penalty units.

One penalty unit is valued at USD 0.77, based on the Bank of Ghana's foreign exchange rate as of 13 March 2025. Employers may also be liable for a fine of GHS 6,000 (approximately USD 386.3), a prison term of three to 12 months, or both, upon summary conviction.

## Employment of people with disabilities

Equal access to employment

While employers are not mandated to employ people with disabilities, they may not deny employment to a qualified person with a disability because of their disability. This ensures that individuals with disabilities have equal access to employment opportunities when they meet the necessary qualifications.

## Training

Additionally, under Ghanaian law, where necessary, an employer will be required to provide or arrange training or retraining for a person with a disability to help them overcome any challenges related to their disability and help them effectively perform their job. This training or retraining must be provided at the employer's expense.

## Physical accessibility

Further, when an employer employs people with disabilities, it is recommended that the workplace be equipped with accessible facilities to accommodate their needs, ensuring they can effectively perform their duties and move around the premises with ease.

## Termination

Under Ghanaian law, an employer is prohibited from dismissing an employee with a disability with solely due to their disability. Such an action constitutes unfair termination and exposes the employer to legal liabilities.

Additionally, where an employee acquires a disability during their employment, the employer may not terminate the employment of that employee, if their residual capacity to work allows them to perform their duties in the same or another suitable position within the organisation. However, if no appropriate alternative position is available, the employer may terminate the employment with notice.

### Notification of employment of people with disabilities

Where an employer employs a person with a disability, the employer is required to notify the nearest Public Employment Centre of the employment. Where the employer fails to do so, the Chief Labour Officer may direct the employer to comply with this obligation. Special incentives are provided to employees who employ people with disabilities.

## Employment of women

### Working hours of pregnant women

An employer is mandated to not assign or require a pregnant employee to perform any night work between 10h00 and 7h00 unless the employee provides her consent. Additionally, an employer is prohibited from engaging a pregnant employee or a mother with a child under eight months old in overtime work. Failure to comply with these provisions may result in the pregnant employee or mother filing a written complaint with the National Labour Commission to address the issue.

### Maternity leave

Under Ghanaian law, a female employee is entitled to a minimum of 12 weeks of maternity leave upon providing a medical certificate confirming the expected date of delivery. This period of leave is in addition to any annual leave she may be entitled to. During maternity leave, the employer is required to pay the pregnant employee her full remuneration and benefits.

If the delivery is abnormal or results in the birth of multiple babies, the maternity leave period may be extended by at least two additional weeks. Additionally, if the pregnant employee experiences illness related to her pregnancy or delivery, medically certified by a doctor, she is entitled to further leave, as recommended by the medical practitioner.

For nursing mothers, the law requires an employer to allow an hour break during working hours for the mother to nurse her baby. Use of work hours for the purpose of nursing a baby are to be treated as working hours, and the employer is obligated to pay for that time.

Further, the law prohibits an employer from dismissing an employee due to her absence from work because of maternity leave or related conditions, such termination is characterised as unfair termination.

## DATA PRIVACY

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

The Data Protection Act protects an employee's right to privacy and personal data. An employer is generally permitted to collect personal data from an employee for lawful and specific purposes. However, where an employer intends to process an employee's personal data, the employer must first register with the Data Protection Commission as a data controller. Generally, the employee needs to consent to processing personal data. Where an employee objects to processing personal data, the employer is mandated to stop processing the personal data.

An employer that processes personal data must also ensure the processing is done in a lawful and reasonable manner without infringing the privacy rights of the employee; and is for necessary and relevant purposes. Sections 28 and 29 of the Data Protection Act direct that an employer registered as data controller must also adopt appropriate measures to secure the integrity of employees' personal data and must treat personal data with confidentiality. Further, section 88 of the Data Protection Act prohibits an employer from purchasing, obtaining or recklessly disclosing personal data of employees.

## 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. However, the employer that is transferring their business may not assign contracts of employment without the consent of the employees and an endorsement from the Labour Officer, as per Regulation 30 of the Labour Regulations. If the employer that is taking transfer of the business as a going concern does not need the previous workforce, the previous business owner may 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?**

Yes. Employees must consent to the transfer to a new employer. Further, the Labour Officer is required to ascertain whether the employees have freely consented to the assignment without any form of coercion or undue influence, or as a result of misrepresentation or mistake, before it approves the assignment of the employees. This process may require an employer to provide evidence of consent by the employees to the Labour Officer.

However, if the sale of the business will result in retrenchment, a statutory procedure must be followed. According to section 65 of the Labour Act, in the

event of retrenchment, the employer is required to provide the Chief Labour Officer and the relevant union 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. The employer is also required to consult the trade union, where applicable, on measures to mitigate the termination and its effects such as finding alternative employment for employees, and to negotiate compensation for employees in the form of redundancy pay.

**Joint and several liability for employers?**

There is no express legal provision that imposes joint and several liability for employers in the event of business transfers.

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

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

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

The law provides that a contract that is not assigned in accordance with the statutory provisions is void. An employer may also face penalties if it fails to comply with the consultation requirements during a

**A NEW EMPLOYER MAY ONLY CHANGE THE TERMS OF EMPLOYMENT WITH THE CONSENT OF EMPLOYEES**

retrenchment exercise. The trade union, where applicable, may initiate an action at the National Labour Commission on behalf of employees for unlawful termination and the retrenchment may be declared unlawful, with the employer required to pay damages.

## 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. Employment may be terminated on the following grounds:

- mutual agreement between employer and employee;
- by the employee on grounds of ill-treatment or sexual harassment;
- by the employer where the employee dies before their employment period expires;
- by the employer if the employee is found to be medically unfit for employment;
- by the employer due to the employee's inability to carry out their work because of sickness or an accident, incompetence of the employee, or proven misconduct of the employee; or
- by the employer on grounds of redundancy.

In order for the termination to be considered fair, the employer must prove that the reason for the termination is fair, and there must be fair procedure. However, there is no requirement to provide a reason for termination of an employment contract.

Under Ghanaian law, a contract of employment may be terminated at any time by either party giving the relevant notice to the other party.

Where the contract has been in place for three years or more, the requisite notice period is one month or one month's salary *in lieu* of notice. Where the contract has been in place for less than three years, the requisite notice period is two weeks or two weeks' salary *in lieu* of such notice. These are the minimum periods set by law, thus the parties to an employment contract may only contract for longer notice periods for termination of their employment contract.

### Termination for misconduct

The Labour Act provides that an 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 however outlines the right of an employer to discipline its employees, and imposes a duty on the employer to provide for and ensure the operation of an adequate procedure for the disciplining of employees. Where the contract of employment or a collective bargaining agreement between a union and the employer sets out the procedure for disciplining an employee, that procedure must be followed.

**What notice periods are applicable?**

If an employee works:

- for three years or more, either party may give one month's 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.

**THE LABOUR ACT PROVIDES THAT AN EMPLOYER CAN DISMISS AN EMPLOYEE DUE TO THEIR PROVEN MISCONDUCT.**

The required notice must be in writing, and the day of giving notice shall be included in calculating the period of notice.

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

## Termination for incapacity

Section 15(e) of the Labour Act provides that an employer can terminate an employee's appointment if the employee is unable to perform their work due to a sickness or an accident.

Additionally, section 15(d) of the Labour Act provides that an employer can terminate an employment relationship if the medical examination finds the employee to be unfit for employment.

Also, section 62 of the act provides that termination of an employee's employment is fair if the employee is incompetent or lacks the requisite qualification for the work for which they are employed.

Termination for incapacity requires that the employer provide one of the above reasons or proves that the termination of employment was as a result of any one of these reasons (where a reason was not provided for the termination of employment). The employer is also required to follow a fair procedure.

### What are the dispute resolution mechanisms?

An employee may lodge a complaint with the National Labour Commission established under section 135 of the Labour Act to deal with unfair labour practices and complaints from employees, trade unions, employers or employers' organisations. An employee can also go to a competent court of jurisdiction in Ghana, the Labour Court, to file a suit against an employer, a trade union or other.

### What remedies are available to employees?

After investigation, should the National Labour Commission consider the termination unfair it could order:

- compensation to the employee;
- reinstatement of the employee from the date of termination; or
- re-employment either in the work for which the employee was employed before termination, or other reasonably suitable work on the same terms and conditions enjoyed by the employee before termination.

## 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 employer must write to the Chief Labour Officer and the applicable trade union, at least three months before the contemplated changes, and provide all relevant information such as the reasons for any termination, the number and category of affected employees, and the period of carrying out the termination.

The employer is also required to follow a fair and objective procedure. The employer is required to consult the applicable trade union on how to avert or minimise the terminations, as well as measures on how to mitigate the adverse effects of the terminations. Where there is no trade union representing the employees, it is sufficient to directly consult with the affected employees or their authorised representatives.

**What are the dispute resolution mechanisms?**
Affected employees may institute legal action on grounds of unfair termination of their employment at the National Labour Commission or in the courts.

However, section 65 of the Labour Act specifically states that disputes regarding the redundancy pay and the terms and conditions of payment may be referred to the National Labour Commission, whose decision will be final.

**What remedies are available to employees?**
Section 65(2) of the Labour Act makes provision for compensation in the form of redundancy pay. According to section 65(4) of the act, the amount of redundancy pay is subject to the negotiation between the employer or representative of the employer and the employees or trade union. Any disputes relating to redundancy pay may be referred to the National Labour Commission. Any other matters may be referred to the commission or the courts.

**UPON TERMINATION, EMPLOYEES ARE ALSO ENTITLED TO REMUNERATION EARNED BEFORE TERMINATION**

**Is third-party approval for termination/ termination documents required?**
Redundancy matters can be negotiated with the applicable trade union if the employee is a member of one.

**Is it permissible to offer employees a voluntary separation package during a redundancy process? Does this undermine the legitimacy of the retrenchment/ redundancy process?**
Yes, it is permissible to offer employees a voluntary separation package during a redundancy process without undermining the legitimacy of the redundancy process.

The redundancy pay required by law and due to the affected employees is determined by way of negotiation between the parties or their authorised representatives. Redundancy pay is usually not imposed on either an employer or employee by a regulatory authority.

## 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 them 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.

In the event of a dismissal, the employee is not entitled to notice or any benefits as it is immediate. Dismissal usually has to do with involvement in an offence against the state, gross disrespect or fraud, among others.

**Are any termination benefits payable in the event of a dismissal for operational requirements?**
Redundancy or severance pay is paid where an organisation closes down or amalgamates with another organisation or arrangement and this causes a severance in the employment relationship and as a result of, or in addition to, the severance, the employee becomes unemployed or suffers a diminution in the terms and conditions of employment. Where an employer introduces major changes in structure, programme, technology, organisation or production which are likely to entail termination of employment for employees, redundancy compensation is payable. This compensation, referred to as redundancy pay, is subject to negotiation between the employer or representative of the employer and the employee or their 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.

**How is severance pay calculated?**
There is no set formula for calculating severance pay. Severance pay is usually determined by way of negotiation between the employer and the employee or their authorised representatives.

However, general practice for calculating severance pay is the multiplication of between one to three months of the employee's salary for each year of continued service by the employee.

**Are any termination benefits payable in the event of a dismissal for incapacity?**
Upon termination, employees are also entitled to the following:

- 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.

Dismissal connotes a gross misconduct on the part of an employee and attracts an immediate end of the employment relationship. Termination does not and also allows for all the benefits accrued to be given to an employee on the expiration of the period of notice or on the date of payment *in lieu* of the notice.

**Are any termination benefits payable in the event of retirement?**
No. The National Pensions Act provides for full or partial retirement. Full pension benefits are attained at 60 (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.

**FULL PENSION BENEFITS ARE ATTAINED AT 60.**

Section 17 of the National Pensions Act also provides for an invalidity benefit as result of non-occupational accident or injuries resulting in permanent invalidity. Where an insured employee has made contributions for 12 months or more in the last 36 months before the invalidity, and is certified by a medical board as to their inability to engage in normal gainful employment, they are entitled to invalidity pension benefits either as minimum pension (which is 37.5% of the employee's best three-year average salary) or earned pension, whichever is higher.

## RETIREMENT

**What is the normal retirement age?**

In Ghana, the compulsory age of retirement is 60, while voluntary retirement is 55. An employee may also retire at 55 if they were working in hazardous conditions.

## POST-TERMINATION RESTRAINTS

### Enforceability of non-compete provisions

**Can contractual non-compete provisions be enforced?**

It depends. Although the Labour Act does not contain non-compete provisions, generally, restraint of trade agreements will be upheld only where it is reasonably necessary to protect the employer's proprietary right or in the nature of trade connections or trade secrets 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 agreement.

### 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.): | **52.43m** |
| Unemployment rate (% of total labour force) (2024): | **5.5%** |
| 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 24 of 2019
- Employment and Labour Relations Court Act 20 of 2011
- Employment Act 1 of 2007
- Employment (Amendment) Act, 2021
- Housing Act, Cap. 117
- Industrial Training Act, Cap. 237
- Kenya Constitution, 2010
- Kenya Citizenship and Immigration Act 12 of 2011
- Labour Institutions Act 12 of 2007
- Labour Relations Act 14 of 2007
- National Social Security Fund Act 45 of 2013
- National Hospital Insurance Fund Act 9 of 1998
- Occupational Safety and Health Act 15 of 2007
- Persons with Disabilities Act 14 of 2003
- Pensions Act, Cap. 189
- Provident Fund Act, Cap. 191
- Retirement Benefits Act 3 of 1997
- Work Injury Benefit Act 13 of 2007

### Regulatory rating

*Heavily regulated.*

**Desmond Odhiambo**
Partner

# Cliffe Dekker Hofmeyr

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**Contact:** desmond.odhiambo@cdhlegal.com

## TRENDS

### The introduction of artificial intelligence in the workplace

The integration of artificial intelligence (AI) into the workplace is a growing trend in Kenya as employers explore its potential to enhance efficiency, productivity and decision-making. However, Kenya currently lacks specific laws regulating the use of AI in the employment sector.

The Government has made some strides toward addressing this gap. For instance, in 2018, the Blockchain & Artificial Intelligence Task Force was established to assess the potential applications of AI in various sectors, including the public sector. One of its key recommendations was the development of a national AI policy and regulatory framework. Despite these recommendations, progress on such a framework has been slow, leaving the country without comprehensive AI-specific regulations to guide its implementation in workplaces.

Further, the Ministry of Information, Communications and the Digital Economy published the Draft Kenya National Artificial Intelligence Strategy 2025–2030 (Strategy) for public participation. The Strategy seeks to guide the country in harnessing the transformative power of AI, ensuring its deployment benefits all sectors of society while adhering to ethical principles, including the principle of inclusivity. Among the governance goals of the Strategy establishing an agile governance and adaptable legal framework for AI, including reviewing relevant legislation such as those in the employment and labour relations sector to reflect the demands of AI and other emerging technology.

In the meantime, due to the absence of an official national regulation on AI, many organisations in Kenya have taken the initiative to create their own workplace policies to govern the use of AI. These policies vary by organisation but typically address issues such as data privacy, ethical usage, transparency in decision-making and employee rights.

There is therefore a growing need to finalise a clear and harmonised regulatory framework to address the implications of AI in the workplace. Such a framework would provide guidance on important issues like fairness in automated decision-making, employee data protection, accountability and retraining of workers displaced by AI technologies.

### Data protection and privacy

Data protection and privacy in Kenya is primarily regulated by the Data Protection Act, 2019 (Data Protection Act) and the Data Protection Regulations, 2021 (Data Protection Regulations). These laws impose specific obligations on employers regarding the handling of personal information collected from employees during the employment process.

#### Processing of data of employees

Section 25 of the Data Protection Act outlines the framework under which data should be processed. To that extent, employers are required to ensure that an employee's data is:

- processed in accordance with the right to privacy;
- processed lawfully, only collected for legitimate purposes and not used for a different purpose;
- accurate and where necessary kept up to date, with measures in place to ensure any inaccurate personal data is erased or rectified without delay;
- adequate, relevant and limited to what is necessary in relation to the purpose for which it is processed;
- kept in a form that identifies the data employee for no longer than is necessary for the purposes for which it was collected; and
- not transferred outside Kenya unless there is proof of adequate data protection safeguards or consent from the employee.

An employer is also required to establish policies outlining how the data of its employees will be protected and for how long their data shall be retained.

#### Registration as data processors or data subjects

The Data Protection Act mandates the registration of data controllers and data processors with the Data Commissioner if they meet certain thresholds. The Data Protection Regulations define these thresholds as follows:

- Entities are exempt from mandatory registration if their annual turnover or revenue is below KES 5 million (approximately USD 31,700) and they employ fewer than 10 people.
- However, some sectors, such as health administration, are required to register regardless of employee count or revenue.

Employers processing employee data must assess whether they meet the criteria for mandatory registration and ensure compliance.

### Employee rights as data subjects

Section 26 of the Data Protection Act outlines the rights of employees (as data subjects) concerning their personal data. These include the right to:

- Be informed about how their personal data will be used.
- Access their personal data held by the employer (data controller or processor).
- Object to the processing of all or part of their personal data.
- Request correction of false or misleading data.
- Request deletion of false or misleading data.

These rights apply to all individuals whose data is processed whether they are employees or job applicants.

In the judgment of Harrison Kisaka v Faulu Microfinance Bank ODPC Complaint No. 0586 of 2023, the claimant applied for a job with the defendant. He was successful in his application, however, before his employment could be confirmed or rejected he was subjected to a background check which generated an adverse report. Upon discovering a criminal charge against the claimant, the defendant declined to offer him employment. Following this, the claimant requested the information generated from the background check, this was declined by the defendant. The Office of the Data Protection Commissioner found that the claimant was entitled to access the background check report as the right to access his personal data accrued whether he was an employee or not.

### Remote working and its implications for the payment of taxes where employees work from another jurisdiction

Remote working across jurisdictions has significant tax implications, particularly with respect to Pay-As-You-Earn (PAYE) tax on employment income. These implications are influenced by the tax residence of both the employee and the employer. The Income Tax Act (ITA) and Kenya's double taxation agreements (DTAs) provide guidance on this matter.

### Scenarios of remote work and the PAYE implications

- Resident employee working remotely for a resident or non-resident employer: A Kenyan resident employee is taxed on their worldwide income, regardless of where the employment is rendered. This means that income earned by a resident employee working remotely, whether for a resident or non-resident employer, is subject to tax in Kenya under section 5(1)(a) of the ITA.
- Non-resident employee working remotely for a resident employer (or a non-resident employer with a permanent establishment in Kenya): A non-resident employee working for a Kenyan resident employer or a non-resident employer with a permanent establishment in Kenya is taxable in Kenya on income earned for services rendered to the employer, even if the employee is working outside Kenya (section 5(1)(b) of the ITA).

### Definitions of residency under the ITA

*For individuals*

An individual is considered a Kenyan resident for tax purposes if they meet any of the following criteria:

- They have a permanent home in Kenya and are present in Kenya for any part of the tax year.
- They do not have a permanent home in Kenya but:
  - are present in Kenya for 183 days or more during the tax year, or
  - are present in Kenya for an average of 122 days in the current and the two preceding years.

### For corporate entities

A company is considered a Kenyan resident if:

- it is incorporated in Kenya,
- its management and control are exercised in Kenya, or
- it has been declared resident by a notice in the Kenya Gazette.

### Relief from double taxation

Remote work arrangements can lead to double taxation where the same income is taxed in both Kenya and the foreign jurisdiction. Relief mechanisms are available to address this:

*For resident employees*

Sections 42 and 43 of the ITA allow foreign tax credits for taxes paid in another jurisdiction on income that is also taxable in Kenya.

Residents must declare the foreign tax paid when filing their Kenyan income tax returns and claim it as a credit to reduce their Kenyan tax liability.

*For non-resident employees*

Kenya has signed DTAs with several countries to prevent double taxation. DTAs specify conditions under which income is taxable in either Kenya or the other jurisdiction. For instance, under the Kenya-France DTA, employment income earned by a French resident is taxable only in France unless the individual works in Kenya for more than 183 days in a year.

## TRENDS... *Continued*

### Other trends

**Mutual separation agreements**

The use of mutual separation agreements (MSAs) as a means of terminating employment is gaining popularity in Kenya. MSAs provide a structured and negotiated settlement between employers and employees, facilitating an amicable end to the employment relationship. While the Employment Act, as the primary legislation on employment, does not explicitly recognise MSAs as a statutory form of termination, the courts have recognised such agreements as legitimate forms of separation.

This rise in popularity is driven by the mutual benefits MSAs offer. Employers can avoid the procedural complexities, potential disputes and reputational risks associated with dismissal or redundancy processes. On the other hand, employees may receive ex-gratia payments or other negotiated benefits, providing financial security and a dignified exit.

Kenyan courts have consistently upheld the validity of MSAs, emphasising that such agreements must be voluntarily entered into, free from coercion, undue influence or misrepresentation. Courts also assess whether employees had adequate time and opportunity to review the terms and, where necessary, seek legal advice before signing.

As workplaces continue to evolve, MSAs are proving to be a pragmatic tool for managing workforce transitions, particularly in cases of restructuring, redundancy or employment disputes. However, to ensure enforceability, it is crucial for employers to draft MSAs carefully, ensuring clarity, fairness and compliance with Kenyan labour laws and best practices.

## BACKGROUND

## HIRING DECISIONS

### Pre-hire checks

**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.

**Is there a concept of dual employment or deemed employment in Kenya? In what instances would this apply?**
The concept of dual employment in Kenya is not anchored in any employment law. However, employers may either allow some work flexibility regarding working with other employers, or in the alternative, expressly prohibit their employees from being actively employed by other employers. For instance, employment contracts may prohibit employees from engaging in any personal work or other personal occupation which is not related to the employee's employment during working hours. Such prohibition would only apply for employees and not independent contractors who are permitted to engage in employment with other employers and are therefore not barred by any exclusivity arrangement.

However, for deemed employment, section 37 of the Employment Act provides that where a casual employee works for a period or a number of continuous working days which amount in the aggregate to the equivalent of not less than one month; or performs work which cannot reasonably be expected to be completed within a period, or a number of working days amounting in the aggregate to the equivalent of three months or more, the contract of service of the casual employee shall be deemed to be one where wages are paid monthly and section 35(1)(c) shall apply to that contract of service.

**PRE-EMPLOYMENT CHECKS TO ENSURE SUITABILITY FOR AN APPLIED POSITION ARE ALLOWED.**

## Immigration

**Are there immigration requirements?**
Yes.

**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 Citizenship and Immigration Act, 2011. A special pass is a temporary work authorisation issued by the Directorate of Immigration Services. They are issued for periods of one, two or three months, up to a maximum of six months in every 12-month period. A 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. In most cases, these applications are applied for by an employer on behalf of an employee unless the employee is self-employed. Special passes or 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, having obtained the necessary licenses for the business or profession, and having 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 Co-ordination 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.

**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.

**EMPLOYERS ARE PROHIBITED FROM DISCRIMINATING WHEN HIRING NEW EMPLOYEES**

## 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 mandatory terms should be included in the employment contract.

**Are zero-hour contracts permissible (contracts without a minimum set of working hours or any basic salary undertaking)?**
Zero-hour contracts, which are contracts that do not guarantee a minimum number of working hours or a basic salary, are not explicitly provided for under Kenyan employment law. Section 10(2) of the Employment Act provides some of the minimum requirements of an employment contract are that it should stipulate the hours of work and the remuneration, scale or method of calculating remuneration.

Further, section 48 of the Labour Institutions Act and the Regulation of Wages General Order provide a minimum wage for certain categories of employees, which cannot be varied by agreement. The court in Nicholas Kinyili v Mocca Lounge and Bistro [2018] eKLR, held that if the employment contract of an employee to whom a wages order applies provides for the payment of less remuneration than the statutory minimum remuneration, then the remuneration and conditions of employment established by the wages order shall be inserted in the contract in substitution for those terms.

### Probation

**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 a further period of up to 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 Service, the Kenya Prisons Service, 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?**
Yes. Kenya has minimum wage regulations set through wage orders under the Labour Institutions Act. These orders are sector-specific and outline the minimum wages payable to employees. Further, the minimum wage in Kenya is normally reviewed every two years according to the wages guidelines.

Effective 1 November 2024, the Government of Kenya increased the minimum wage by 6% across all sectors. For general labourers (including cleaners, sweepers and gardeners), the new minimum wages are:

- KES 16,113.75 in Nairobi, Mombasa, Kisumu, Nakuru and Eldoret;
- KES 14,866.92 in former municipalities and towns like Mavoko, Ruiru, and Limuru; and
- KES 8,596.49 in all other areas.

An employer who fails to pay at least the statutory minimum remuneration to an employee to whom a wages regulation order applies or fails to provide the 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. The Regulation of Wages (General) Order provides that the normal working week 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. Further, any person under the age of 16 is required not to work for more than six hours in any day. Every employee is also entitled to one whole rest day in each week, although the parties may mutually

consent to defer the employee's rest day, and such deferred rest day may be taken by the employee on a subsequent day or the employee may accumulate such rest days to a maximum of 14 days and then take them as leave with full pay in addition to their annual leave entitlement. However, the weekly rest day of a person under the age of 16 cannot be deferred.

**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 the consent of the employee, into different parts, taken at different levels of at least two uninterrupted working weeks unless it is otherwise agreed 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.

**AN EMPLOYEE IS ENTITLED TO AT LEAST 21 WORKING DAYS OF FULL PAID LEAVE**

**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 of sick leave with full pay and thereafter to a maximum of 15 days of 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 of 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.

**What statutory payments is an employer required to make to the government in relation to employees, including deductions from employees' salaries and employer contributions, such as unemployment insurance to cover periods of unemployment?**

Kenya does not currently have an unemployment insurance scheme and on termination of employment, individuals do not receive government-provided financial support during periods of unemployment.

Employers in Kenya are mandated by law to make various statutory payments to the Government, including deductions from employees' salaries and employer contributions. These include:

- **Income tax:** PAYE income tax (under the Income Tax Act), which is applicable for both domestic and foreign workers and applies to individuals earning KES 24,000 or more per month. Employers deduct PAYE and remit it to the Kenya Revenue Authority by the ninth of the following month.
- **Health insurance premiums:** The Social Health Insurance Fund (SHIF) contribution (under the Social Health Insurance Act, 2023), is a mandatory health insurance contribution providing employees with access to medical services. Registration is mandatory for all Kenyans, while any other person who is not Kenyan and is ordinarily resident in Kenya is eligible for registration. The SHIF contribution rate is 2.75% of the employee's gross salary;

- **Social security contributions:** National Social Security Fund (NSSF) contributions under the National Social Security Fund Act, Cap 258. The NSSF is a pension scheme designed to enable employees to save for retirement. The contributions are shared between the employer and employee, with each contributing 6% of the employee's gross monthly salary, up to a maximum of KES 1,080 per month.
- **Industrial training levy:** Under the Industrial Training Act, Cap. 237, employers are required to pay the National Industrial Training Authority (NITA) levy at a standard monthly rate of KES 50 per employee, including casual workers.
- **Housing levy:** Under the Affordable Housing Act, 2024, and pursuant to the Affordable Housing Programme, which is intended to support the creation of affordable housing units across the country, the levy is set at 1.5% of an employee's gross salary, which is to be matched by employers.

## 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 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.

**What are the legal requirements concerning trade unions and worker organisations, including registration obligations, organisational rights, and entitlements to represent employees in the workplace?**

Trade unions and worker organisations in Kenya are governed by the Labour Relations Act, which provides a legal framework for their registration, recognition and activities.

## Registration obligations

- A trade union must be registered with the Registrar of Trade Unions.
- A union must have at least seven members to apply for registration.
- A registered trade unions union must have a constitution and abide by the rules set under the Labour Relations Act.
- Only people in a sector specified in a trade union's constitution qualify for membership of the trade union, unless the Registrar permits the union to consist of persons working in more than one sector, where the Registrar is satisfied that the trade union's constitution contains suitable provisions to protect and promote the respective sectoral interests of the employees.

## Recognition of trade unions by employers

Employers, including those in the public sector, are required to recognise a trade union for purposes of collective bargaining if the trade union represents a simple majority of unionisable employees. In the case of a group of employers, or an employers' organisation, a trade union is recognisable if it represents a simple majority of unionisable employees employed by the group of employers or the employers who are members of the employers' organisation within a sector.

Once the trade union meets the simple majority threshold, the employer is required to enter into a written recognition agreement with the trade union.

If an employer refuses to recognise a trade union despite it having met the majority threshold, the trade union may refer the dispute for conciliation and if conciliation does not resolve the dispute, the trade union may escalate the matter to the Employment and Labour Relations Court under a certificate of urgency.

## Organisational rights of trade unions

Trade unions have various rights, including:

- The right to recruit members and represent them in collective bargaining agreements.
- The right to access workplaces to recruit new members, hold meetings with existing members, represent the members in dealings with the employer, and conduct ballots.
- The right to engage in industrial action (strikes and picketing), subject to legal notice requirements.

## Entitlement to represent employees

- Trade unions negotiate collective bargaining agreements with employers.
- They can represent employees in labour disputes before the Employment and Labour Relations Court.

## 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 of Finance.

### 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 their 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?**
Kenya has replaced the National Hospital Insurance Fund with the SHIF, a public scheme designed to provide affordable healthcare coverage. Effective from October 2024, all employers are required to deduct 2.75% from each employee's monthly gross salary and remit this amount to the Social Health Authority by the ninth of the following month.

### 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 income tax from an employee's monthly pay and remit it to the Kenya Revenue Authority. Employees who earn less than KES 24,000 per month are not obliged to pay tax. The amount of tax payable ranges from 10% to 35% pursuant to the Finance Act, 2023, effective 1 July 2023.

Kenya taxes individual income based on certain set tax bands, as outlined below:

| Monthly pay bands (KES) | Annual pay bands (KES) | Rate of tax (%) |
|---|---|---|
| On the first KES 24,000 | On the first KES 288,000 | 10 |
| On the next KES 8,333 | On the next KES 100,000 | 25 |
| On the next KES 467,667 | On the next KES 5,612,000 | 30 |
| On the next KES 300,000 | KES 3,600,00 | 32.5 |
| On all income above KES 800,0000 | On all income above KES 9,600,000 | 35 |

**Do employees who work remotely from a foreign jurisdiction and pay taxes in their country of residence, require a Kenyan work permit to render services to a Kenyan entity?**
No. Work permits are issued to a person who intends to work within the borders of Kenya and who is offered specific employment by a specific employer, the Government of Kenya, any other person or authority under the control of the Government, or an approved technical aid scheme under the United Nations or some other approved agency.

Additionally, for the permit to be granted, the foreigner must possess skills or qualifications not available in Kenya and it must be proved that their employment will be of benefit to Kenya.

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

## Other social benefits

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

Employers may deduct contributions to a provident fund, superannuation scheme, or any other scheme approved by the Commission of Labour to which the employee agreed to contribute from their wages. Employers and their employees must make monthly social security contributions to the NSSF 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 SHIF and employers deduct and remit monthly contributions from the employee's salary to the SHIF.

The housing levy is another deduction. Employers must deduct 1.5% of an employee's gross salary and match this with an equal employer contribution of 1.5%. The levy is meant to support the affordable housing programme and is remitted to the Kenya Revenue Authority.

## Skills development

What legislative frameworks exist to support workforce skills development, including strategies for upskilling, learnership provisions, financing for skills development, and the regulation of employment services?

### Key legislative frameworks

- **Industrial Training Act:** Establishes the NITA to promote vocational training and apprenticeship programmes and develop national training standards;
- Technical and Vocational Education and Training Act, Cap. 210A: Regulates technical and vocational training institutions to provide market-driven skills development.
- **Universities Act, Cap. 210:** Governs higher education training, including industry collaborations and research-driven workforce skills development.
- **Employment Act:** Mandates training and skills development as part of employment, recognises apprentices and indentured learners as employees, and further authorises the employment of children between the age of 13 and 16 to participate in approved vocational orientation or training programmes.
- **Science, Technology and Innovation Act, Cap. 511:** Establishes the National Commission for Science, Technology, and Innovation to promote knowledge creation, research and skills development in innovation and technology fields.
- **Basic Education Act, Cap. 211:** Provides for career guidance and technical training from early education stages to prepare the youth for employment.

### Strategies for upskilling and learnership provisions

Generally, the following strategies and policies are adopted for learnerships and skills development:

- **On-the-job training programmes:** Many employers integrate structured in-house training, mentorship, and coaching to build employees' competencies;
- **Apprenticeship and internship programmes:** Under NITA, organisations offer apprenticeships where trainees gain hands-on experience.
- **Learnership agreements:** Employers may engage employees in structured learnership programmes that combine theoretical learning with practical workplace exposure.
- **Industry-specific training programmes:** Some sectors, such as law, banking, finance and technology, have specialised certification and training programmes.

### Financing for skills development

- **NITA levy:** Employers are obligated to pay a mandatory training levy, which is used to fund workforce skills development programmes.
- **Higher Education Loans Board:** Provides education financing for students pursuing technical and professional training.
- **Youth Enterprise Development Fund:** Established to champion the creation of employment for youth through enterprise development. The fund supports young entrepreneurs in acquiring business skills and funding opportunities.

## Affirmative Action

**What affirmative action obligations do employers have under the law, and what measures must they implement to ensure compliance?**

Affirmative action in employment is mandated by several laws in Kenya, ensuring equal opportunities for marginalised groups.

### Constitutional requirements

- Article 27 of the Constitution mandates non-discrimination based on gender, disability, ethnicity or other factors. The state is further obligated to take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.
- Article 55 requires the state to take measures, including affirmative action programmes, to ensure the youth access employment and training opportunities.

**Employment Act**

Section 5 prohibits discrimination in recruitment, training, promotions, terms and conditions of employment, termination of employment, or other matters arising out of the employment. The section further confirms that it is not discrimination to take affirmative action measures consistent with the promotion of equality or the elimination of discrimination in the workplace. As such, employers are required to implement employment policies and practices that promote equality and eliminate discrimination.

### Persons with Disabilities Act

- The act prohibits denying a person with a disability access to opportunities for suitable employment.
- It further requires that a qualified employee with a disability must be subject to the same terms and conditions of employment and the same compensation, privileges, benefits, fringe benefits, incentives or allowances as qualified able-bodied employees.
- Employees with disabilities are entitled to exemption from tax on all income accruing from their employment.
- Proprietors of public buildings are required to adapt such buildings to suit persons with disabilities.
- Private employers that engage persons with disabilities with the required skills or qualifications either as regular employees, apprentices or learners are entitled to apply for deductions from their taxable income equivalent to 25% of the total amount paid as salary and wages to such employees.
- Private employers that improve or modify their physical facilities or avail special services to provide reasonable accommodation for employees with disabilities are entitled to apply for additional deductions from their net taxable income equivalent to 50% of the direct costs of the improvements, modifications or special services.

## 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.

**Registration as data controllers/processors**

Employers are generally required to register with the Office of the Data Protection Commissioner as a data controller or data processor unless they have:

- fewer than 10 employees; and
- an annual turnover or an annual revenue of less than KES 5 million (approximately USD 31,700).

There are some industries that are subject to registration, such as health administration, regardless of their number of employees or annual turnover.

**Duties of employers as data controllers/processors**

The enactment of the Data Protection Act and the Data Protection Regulations imposed some duties on employers with regards to personal information obtained from employees by virtue to the employment process.

Section 25 of the Data Protection Act outlines the framework under which data should be processed. To that extent, employers are required to ensure that an employee's data is:

- processed in accordance with the right to privacy;
- processed lawfully, only collected for legitimate purposes and not used for a different purpose;
- accurate and where necessary kept up to date, with measures in place to ensure any inaccurate personal data is erased or rectified without delay;
- adequate, relevant and limited to what is necessary in relation to the purpose for which it is processed;
- kept in a form that identifies the data employee for no longer than is necessary for the purposes for which it was collected; and
- not transferred outside Kenya unless there is proof of adequate data protection safeguards or consent from the employee.

The employer is also required to establish policies outlining how the data of its employees will be protected and for how long their data shall be retained for.

**Rights of employees/potential employees as against employees**

Section 26 of the Data Protection Act outlines the rights of employees (as data subjects) concerning their personal data. These include the right to:

- Be informed about how their personal data will be used.
- Access their personal data held by the employer (data controller or processor).
- Object to the processing of all or part of their personal data.
- Request correction of false or misleading data.
- Request deletion of false or misleading data.

These rights apply to all individuals whose data is processed whether they are employees or job applicants.

In the judgment of *Harrison Kisaka v Faulu Microfinance Bank ODPC* Complaint No. 0586 of 2023, the claimant applied for a job with the defendant. He was successful in his application, however, before his employment could be confirmed or rejected he was subjected to a background check which generated an adverse report. Upon discovering a criminal charge against the claimant, the defendant declined to offer him employment. Following this, the claimant requested the information generated from the background check, this was declined by the defendant. The Office of the Data Protection Commissioner found that the claimant was entitled to access the background check report as the right to access his personal data accrued whether he was an employee or not.

## 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 the 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). Employers 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 above, 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, compatibility of the employee or operational requirements that necessitate a redundancy. The procedure for termination set out in the Employment Act must be followed.

While section 42 of the act permitted probationary contracts to be terminated without cause, the court in Monica Munira Kibuchi and Six Others v Mount Kenya University; Attorney General (Interested Party) [2021] eKLR declared this section null and void to the extent that it excluded an employee holding a probationary contract from the provisions of section 41 of the Employment Act. The three-judge bench found that there was no reasonable and justifiable cause in the exclusion of an employee holding a probationary contract from the procedural safeguards contained in section 41 of the Employment Act and that such exclusion was therefore inconsistent with Articles 41 and 47 of the Constitution, and hence was null and void.

**EMPLOYEES REMAIN UNDER THE EMPLOYMENT OF THE EMPLOYING ENTITY UNLESS THEIR EMPLOYMENT CONTRACTS ARE TERMINATED**

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.

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.

## 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:

- where the contract is to pay wages daily, it may be terminated by either party at the close of any day without notice;
- 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
- 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 with 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 them, as the case may be, in respect of the required period of notice.

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 (section 35(5)) unless the employee is a member of:

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

## 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 their conduct indicated that they have fundamentally breached their 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:

- Investigations into the misconduct are carried out.
- The employee is issued a written notice to show cause.
- A disciplinary hearing is conducted and, following this, the disciplinary committee informs the employee of the decision, which can be:
  - a final warning:
  - 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 by its nature was their duty, under their contract, to have performed carefully and properly;

- 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 disability, social or ethnic origin, mental status, pregnancy or HIV/AIDS status.

**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 paid 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, following the giving of notice in writing.

Either 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 reinstate 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 available 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 for every year worked provided that the same was included in the employment contract. Further, an employee may be exempted from service pay as provided for under the Employment Act, for instance, employees who are members of the NSSF, a gratuity or service pay scheme established under a collective agreement, or any other scheme established and operated by an employer whose terms are more favourable than those of the service pay scheme, are not eligible for service pay.

**THE EMPLOYER MUST PROVIDE THE EMPLOYEE WITH A REASON FOR CONSIDERING TERMINATION OF THE EMPLOYMENT RELATIONSHIP.**

**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:

- 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 they have the right to be accompanied by a colleague or union representative.
- 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 them *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. Before terminating the employment of an employee, an employer must:

- explain to the employee, in a language the employee understands, the reason why the employer is considering termination;
- allow a representative of the employee (being either a fellow employee or a shop floor representative) to be present during the explanation; and
- ensure that the employee has been given a reasonable opportunity to make their 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 to 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 paid periodically at intervals of less than one month, a contract is terminable by either party at the end of the period 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 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 they would have earned had they 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 KES 5 million to KES 7,5 million). Awards for discrimination are not based on the employee's remuneration as this poses the danger that high earning individuals may unwittingly be awarded more as compensation that those who earn less, even though the injury suffered 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. Thirty days' notice of termination on grounds of redundancy is thereafter given to the employee, labour officer and trade union for unionised employees. After the lapse of the statutory 30-day notice period, 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.

**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**

**THE EMPLOYER IS REQUIRED TO CONSIDER SENIORITY, SKILL, ABILITY AND RELIABILITY OF THE EMPLOYEES WHEN CONSIDERING REDUNDANCY.**

**Are any termination benefits payable in the event of a dismissal for operational requirements? If yes, what benefits are payable?**

Yes. This includes:

- one month's notice or one month's pay *in lieu* of notice;
- leave days accrued but not taken; and
- severance pay in the event of redundancies at the rate of not less than 15 days' pay for each completed year of service.

**How is severance pay calculate?**

According to section 40(g) of the Employment Act, the employer pays severance pay at the rate of not less than 15 days' pay for each completed year of service.

**What are the dispute resolution mechanisms?**

Parties may approach a labour officer or the Employment and Labour Relations Court 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 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 Employment and Labour Relations Court 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 the Constitution and the 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 employers' organisations;
- disputes between an employers' organisation and a trade union;
- disputes between a trade union and a member thereof;
- disputes between an employers' 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 Article 164(3) of the Constitution.

## The remedies awarded

Section 12(3) of the Employment and Labour Relations Court 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:

- an interim preservation order, 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 also deal with termination of contract of employment, summary dismissal, unfair termination and any issues arising between employer and employee.

**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 they would have earned had they 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.

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 KES 5 million to KES 7,5 million). Awards for discrimination are not based on the employee's remuneration as this poses the danger that high earning individuals may unwittingly be awarded more as compensation that 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.

**Is it permissible to offer employees a voluntary separation package during a redundancy process? Does this undermine the legitimacy of the retrenchment/ redundancy process?**
Yes. It is permissible to offer employees mutual separation agreements during the retrenchment/redundancy process and it does not undermine the legitimacy of the process.

## Notice requirements
As above. The notice periods in section 35 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 paid 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 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.

**THERE IS**
**NO MANDATORY**
**RETIREMENT AGE IN THE PRIVATE SECTOR.**

## 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. However, there are instances where exceptions may be granted, particularly at management level or for 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. 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 the 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 would 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?**
Kenya does not have specific legislation on trade secrets and confidential information. Despite this, employers can protect their confidential information and trade secrets through common law principles and contractual agreements. Under English common law, employees owe a duty of good faith and fidelity requiring them to maintain confidentiality during and after employment. To reinforce this, employers can include confidentiality clauses in the employment contracts, non-disclosure agreements and reasonable non-compete clauses to prevent unauthorised use or disclosure of sensitive business information.

Additionally, the Copyright Act, 2001 and the Industrial Property Act, 2001 also provide protection for intellectual property, including proprietary software, business strategies and industrial innovations. In cases of breach, an employer may seek injunctions, damages or legal remedies as against the employees.

# LESOTHO

| | |
|---|---|
| Official language(s): | English, Southern Sotho |
| Population (approx.): | **2m** |
| Unemployment rate (2024): | **16.3%** |
| Name of court for labour matters: | Directorate of Dispute Prevention and Resolution (DDPR), Labour Court, Labour Appeal Court |
| Are pre-employment checks permissible? | Yes, this is not specifically regulated but is not prohibited |
| 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 3 of 2024 (Labour Act)
- Occupational Safety and Health Act 4 of 2024 (Occupational Safety and Health Act)
- Workmen's Compensation Act 13 of 1977 (Workmen's Compensation Act)
- Labour Code (Codes of Good Practice) Notice, 2003

### Regulatory rating

*Heavily regulated.*

# Webber Newdigate

## Webber Newdigate has been providing legal services since 1978 and serve all clients - small to large businesses as well as individuals.

We aim to provide our valued clients with skilled legal services in a timely and efficient manner. We strive to handle each matter with responsiveness, accountability and honesty.

Webber Newdigate was established in 1978 in Maseru, Lesotho by the partners at the time of Webbers in South Africa. Webber Newdigate has developed into the largest law firm in Lesotho

We provide legal services to mining companies, government authorities, insurance companies, banks, para-statal organisations and various stakeholders in the Lesotho Highlands Water Project, such as international construction companies, professional advisory firms and consortiums.

We act as local counsel in a wide range of international projects and assist foreign businesses who are seeking to enter the Lesotho market or are established in the country and require on-going legal services.

**Tanki Mosamane**
Consultant

**Contact:** mpt@webberslaw.com

## TRENDS

### General:

In Lesotho, there has been a significant change in industrial relations due to the new Labour Act. Some of the major changes align with global trends. The act has introduced flexibility in hours of work by permitting employers to stipulate the hours of work monthly where the nature of the job so requires. The act has also extended coverage to the public service and informal sector. To address the backlog of cases, the new law empowers the Labour Court to make arbitral awards and settlement agreements orders of court so that they can be enforced. One of the notable introductions which aligns with global trends is the inclusion of additional mandatory benefits. The Labour Act has introduced paternity leave, family responsibility leave, compassionate leave, stillbirth maternity leave and adoption leave. The period of maternity leave has also been increased to 14 weeks. In addition, the new act allows registered trade unions and employers' organisations to establish bargaining councils. The act also oversees the rights of workers during a business transfer.

There is also a new Occupational Safety and Health Act. This law is intended to ensure safe and healthy workplace environments and working conditions. It applies to private employment and public service. It aligns with global trends by extending coverage to the agricultural sector, informal sector and the self-employed.

Another general trend came in the aftermath of the COVID-19 pandemic. Some employers in Lesotho have gravitated towards permitting employees to work from home or remotely. This is practiced where a job does not necessarily require a worker to work from the employer's place of business. The new Labour Act has aligned with this global trend by broadening the scope of the definition of workplace. In terms of the Labour Act, a workplace means a place where a worker carries out work for their employer and includes a home, office or place where work is carried out at a particular time. The act further recognises a homeworker who is defined as any person who carries out work on their premises, and not at the employer's workplace, for remuneration which results in a product specified by the employer. With the increase of this flexible working arrangement, it is likely that in the future workers will work in and out of the actual place of business of the employer.

### The introduction of artificial intelligence in the workplace

In Lesotho, there are no express provisions dealing with artificial intelligence (AI) in the workplace. This means that currently, the law does not safeguard against risks posed by AI systems. Even though there is no regulation, the law recognises a dismissal arising from redundancy caused by technological reasons. The law defines technological reasons as the introduction of new technology which affects work relationships by making existing jobs redundant or adapting to new technology. Presumably, employers can introduce AI in the workplace even though in Lesotho employers are inclined towards traditional forms of standard employment. Once there is a rise in the integration of AI in Lesotho workplaces, the immediate risk is that various positions will become redundant, and this will lead to job losses. As employers and workers are highly litigious in this jurisdiction, there is a likelihood of an influx in dismissal cases by retrenched workers.

### Data protection and privacy

In terms of the Data Protection Act 5 of 2012 (Data Protection Act), an employer can only process the information of an employee with the employee's consent and if the processing is necessary for the conclusion or performance of a contract. The information is sourced directly from the employee unless the employee consents to it being acquired from another source.

### Remote working and its implications for the payment of taxes where employees work from another jurisdiction

There is no restriction on remote working in Lesotho. However, employees working from another jurisdiction are liable to pay taxes on the income derived from Lesotho. This is in terms of section 4 of the Income Tax Act, 1993 (Income Tax Act).

### Other trends:

Due to the unprecedented impact of the COVID-19 pandemic on various businesses, a large number of employers were forced to restructure their businesses to effect cost-saving measures and revive their businesses. In recent times, there has been an increase in the number of disputes related to dismissal arising from operational requirements or retrenchment of workers in Lesotho.

## 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 section 127(1) of the Labour Act, which provides the types of employment contracts. As such, employers may enter into:

- a contract without reference to limit of time (permanent employment contract);
- a contract for a period of fixed duration (fixed-term contract);
- a contract to perform some specific work or to undertake a specified journey; and
- the employer may hire a person to work as an independent contractor, but the independent contractor is not subject to the labour laws.

**Is there a concept of dual employment or deemed employment in Lesotho? In what instances would this apply?**
The law is silent on dual or deemed employment. However, the Labour Act defines a worker as a person who performs work in any capacity for an employer or at the employer's business or undertaking. It can therefore be assumed that a worker cannot enter into an employment relationship with more than one employer.

### Immigration

**Do foreign employees require permits to work and which visas may be obtained to allow foreigners to work?**
In Lesotho, there is a distinction between a work permit and a visa. Individuals visiting Lesotho for reasons unrelated to employment require a visa, but if their intention is to engage in employment, a work permit is required.

Foreign employees are not permitted to work in Lesotho unless they are in possession of a valid work permit issued by the Director of the National Employment Service. The work permits and the duration of each are specified in the regulations by the Minister of Labour and Employment (Minister), acting on the advice of National Advisory Committee on Labour. The Director of the National Employment Service has the power to renew or cancel a work permit.

In addition to the work permit, foreign employees are required to apply for a resident permit if they are going to reside in Lesotho during the course of their employment.

**Are there any limitations placed on employers' discretion to determine new hires?**
The Labour Act requires the Director of the National Employment Service to 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. The work permit will be issued after the Director of the National Employment Service has certified that there are no citizens qualified and available for that particular type of employment within the labour market database.

## CONDITIONS OF EMPLOYMENT

**Are contracts of employment required?**
A contract of employment is required in either form, whether written or oral. The Labour Act defines a contract as a contract of employment whether oral or written, express or implied, by which a worker enters the service of an employer.

**Are zero-hour contracts permissible (contracts without a minimum set of working hours or any basic salary undertaking)?**
In our jurisdiction, terms like zero-hour contracts are not used, however, nothing prevents an employer from contracting without a minimum set of working hours or a basic salary undertaking. In our jurisdiction, people working under such agreements are known as casual workers.

**Are there any formality requirements attached to employment contracts, e.g. written format and/or signed?**
None. Except for contracts of foreign services, which must be in writing and presented to a notary in quadruplicate.

### Probation

**Can a probation period be used, and if so, is there a maximum prescribed period of probation?**
The Labour Act provides that a worker may be employed for a probationary period not exceeding four months. The probationary period may be extended with the leave of the Labour Commissioner, by way of written application. The law does not prevent the employer and a worker from agreeing to a probationary period of up to a year for workers holding managerial or professional positions, or those employed in a professional capacity.

**THE LABOUR ACT PROVIDES THAT A WORKER MAY BE EMPLOYED FOR A PROBATIONARY PERIOD NOT EXCEEDING FOUR MONTHS.**

## Minimum employment rights?

**Are any employees excluded from minimum employment rights?**
The Labour Act does not have universal coverage. According to section 3(2), it does not apply to members of the:

- Lesotho Defence Force
- Lesotho Mounted Police Service
- National Security Service
- Lesotho Correctional Service

**Is there a minimum wage requirement?**
Lesotho has a government-mandated minimum wage which varies by sector. The Wages and Conditions of Employment Advisory Board recommends to the Minister the minimum wage to be paid, and upon such recommendation, the Minister publishes the fixed minimum wage by notice in the Gazette. No worker in Lesotho is supposed to be paid less than the mandatory minimum wage.

**What is the standard/maximum working hours? Are there prescribed minimum resting periods during the normal working day/week?**
Section 186 of the Labour Act provides that the working hours of a worker shall not exceed 45 hours a week. A worker who ordinarily works a five-day week can only work nine hours a day. A worker who ordinarily works a six-day week is expected to work eight hours a day for five days and five hours on one of the days. The employer is not permitted to require a worker to work continuously for more than five hours without affording them a rest period of at least an hour.

Workers are entitled to a weekly rest period of at least 24 continuous hours. The law provides that a worker who works on a worker's day, their weekly rest day or a public holiday is entitled to be paid double their wage rate for an ordinary workday.

**What are the minimum requirements relating to overtime?**
In terms of section 186(3) of the Labour Act, where the employer requests or permits a worker to work up to 12 hours a day, the additional hours are considered to be overtime. The employer is required to pay the worker for overtime worked at a rate not less than 1.25 times the worker's normal wage rate.

**What are the minimum requirements relating to annual leave?**
Section 188 of the Labour Act prescribes that a worker is entitled to a minimum of 12 working days of annual leave on full pay. Where the employment contract or collective agreement provides for leave of more than the minimum 12 days of annual leave, the worker's annual leave may be carried over to the following year. Leave carried over to the next calendar year may not exceed 18 days.

**What are the minimum requirements relating to sick leave?**
The law provides that after six months of continuous employment with the same employer, a worker is entitled to sick leave for up to 12 days in the second six-month period of continuous employment. After 12 months of continuous employment, a worker is entitled to fully-paid sick leave of up to 12 days, and sick leave of up to 24 days on half pay in each period of the 12 months. Entitlement to leave may not be carried over from one year to another.

**What are the minimum requirements relating to parental leave, and does it apply to both parents or only mothers?**
Section 191(1) and (2) of the Labour Act provides that female workers are entitled to 14 weeks of maternity leave, which is calculated as follows:

- seven weeks before the birth of the baby; and
- seven weeks after the birth of the baby.

A female employee who wishes to nurse or feed her infant child is entitled to do so for up to an hour each day for six months after her return to work. The nursing or feeding period forms part of the worker's normal working hours.

**NO WORKER IN LESOTHO IS SUPPOSED TO BE PAID LESS THAN THE MANDATORY MINIMUM WAGE.**

**CONSULTATION AND/OR NEGOTIATION BY REPRESENTATION IS ALSO ALLOWED.**

According to section 191(8) of the Labour Act, a male employee is entitled to 14 days of paternity leave upon birth of their child.

The law also provides for 14 days of bonding leave for parents who have adopted a child. The leave is taken from the day the adopted child arrives at the family home.

**What are the minimum requirements relating to family responsibility leave (if any)?**
A worker is entitled to bereavement leave of five days for an immediate family member.

A parent of a hospitalized child is entitled to responsibility leave if so advised by the medical doctor. The law prescribes that when a child is discharged from hospital, a registered medical practitioner shall advise on the sick leave to be granted to the parent.

**Are employees automatically entitled to bonus payments?**
No. While the word wages in the Labour Act is broadly defined to mean remunerations or earnings, in section 188(8) the words "*full pay*" are defined to exclude bonus payments. Therefore, bonuses are still discretionary.

## Changing terms and conditions of employment

**Are employees automatically entitled to periodic increases; alternatively, how do the parties normally achieve consensus on increases?**
No. There is no automatic right. Salary increases remain the prerogative of the employer. The requirement of consensus would be imposed by a collective bargaining agreement or if the employer has bestowed the automatic right to a salary increase in the contract of employment. If an employee is contractually entitled to increases, the process of obtaining consensus would be through negotiation and if there is no agreement, declare a dispute. Once a dispute has been declared, industrial action is the option.

**Can employment terms be changed without achieving agreement with the employees?**
No. Because an employment contract is a bilateral agreement, common law principles of contract do not permit unilateral changes to a bilateral agreement.

**Are employees commonly represented in their interactions with employers relating to changes to employment terms?**
Yes. If the employees are unionised. Consultation and/or negotiation by representation is also allowed.

**THE LAW DOES NOT OBLIGE THE EMPLOYER TO PROVIDE EMPLOYEES WITH MEDICAL AID MEMBERSHIP OR OTHER ASSISTANCE WITH MEDICAL COSTS.**

## SOCIAL BENEFITS, TAX AND PENSIONS

### Workplace injuries

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

Employers are required to take out insurance cover for payment of benefits to employees who suffer accidental death, injury or occupational diseases in the course of employment. This is in accordance with the Workmen's Compensation Act which entitles employees to compensation in the event of injury, death or contracting occupational diseases in the course of duty. Furthermore, compensation is limited to employees who meet the definition of a "*workman*" as defined by the act.

### Return to work

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

It depends on the extent of injuries or incapacity. It is one thing to compensate for occupational injuries and it is another to terminate a worker for incapacity unless the employee is totally incapacitated and there are no alternative posts. There is an obligation for employers to reintegrate employees into the workplace after recovery, but that does not mean an employee should be put on sick leave indefinitely. Overly extended sick leave is an indication that an employee is incapacitated and 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?**

The law does not oblige the employer to provide employees with medical aid membership or other assistance with medical costs. Nonetheless, the law does not prohibit the parties from agreeing on medical aid fund schemes for comprehensive health insurance coverage. This may be included in the employment contracts. Section 180(2)(b) of the Labour Act recognises that the employer may deduct contributions to the medical aid fund scheme from the worker's wages

### 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 156 of the Income Tax Act obliges the employer to withhold tax from payment of the employee's income as prescribed in the Income Tax Regulations, which set out the rate of withholding tax. The employer is further obligated to pay over the tax withheld within 15 days from the end of the month. The employer is expected to deliver a tax withholding certificate to the payee (employee) within 28 days after the end of a tax assessment. Section 164 requires the employer to retain records showing payments paid and tax withheld.

The tax rates applicable differ depending on the income.

**Do employees who work remotely from a foreign jurisdiction and pay taxes in their country of residence, require a Lesotho work permit to render services to a Lesotho entity?**

This is not clear because of the language used in the Labour Act. There could be one or more interpretations to the relevant section. One interpretation could be that as long as the employee is working for a Lesotho-based entity, that employee requires a work permit. Another argument would be that this kind of situation is not covered by the act and therefore there is a lacuna in the law.

### Other social benefits

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

Except for compensation for occupational injury or death of a workman and severance pay, there are no other compulsory social security benefits in Lesotho. Employees do not have to contribute to this. However, contract-based social security like retirement and provident funds are often contributed to by both parties.

## DATA PRIVACY

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

The Data Protection Act regulates the protection and processing of personal information. The act is not specific to employers and employees but includes any person. In terms of the act, the employer can only process an employee's information with the employee's consent and if the processing is necessary for the conclusion or performance of a contract. The information is sourced directly from the employee unless the employee consents to it being acquired from another source. The Labour Act obliges an employer to keep records, books, accounts and statistics of its workers. In terms of section 70(2) of the Labour Act, the Director of Labour Market Information may require the employer to furnish returns and statistics of the rates of remuneration for the workers, but the processing of this information is subject to the provisions 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?**

Yes. In terms of section 129(2) of the Labour Act, the new employer is automatically substituted in place of the old employer with respect to all employment contracts in existence immediately before the date of 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?**

There is no provision dealing with consultation or the requirement of information disclosure prior to transfer.

**Joint and several liability for employers?**

There is no provision that expressly deals with joint and several liability of employers. However, the Labour Act provides that anything done before the transfer by the old employer, such as dismissal, an unfair labour practice or unfair discrimination, is considered to have been done by or in relation to the new employer. It can therefore be assumed that the new employer solely acquires the liability.

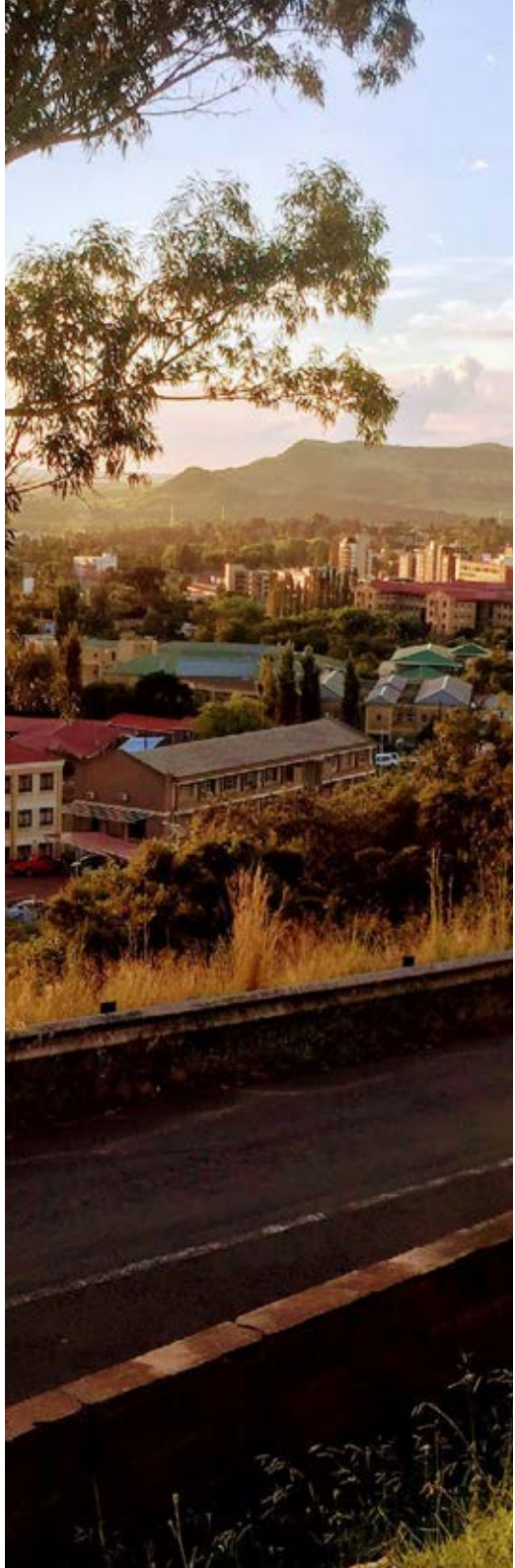
**Is it possible to change terms and conditions of employment in the context of a business transfer?**

The law mandates the new employer to employ the transferred workers on terms and conditions that are on a whole not less favourable to the workers than those they were employed under by the old employer unless the particular terms of employment are determined by a collective agreement.

It can be assumed that it is possible to change the terms and conditions but only in so far as they are an improvement to the ones provided under the old employer.

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

There is no provision expressly dealing with the consequences in the event of non-compliance.



## TERMINATION OF EMPLOYMENT

**What are the statutory obligations and procedures for terminating a contract of employment?**
Section 139(1) of the Labour Act provides that a worker shall only be dismissed for a valid reason related to the following:

- incapacity of the worker to perform the work they are employed for;
- conduct of the worker; or
- operational requirements of the employer.

Where a worker is dismissed for incapacity, conduct or operational requirements, they are entitled to defend themselves against the allegations made to the extent that it is reasonable for the employer to provide such opportunity. Furthermore, section 141 of the Labour Act obliges the employer to provide a written statement stipulating the reason for dismissal to an employee who is dismissed for incapacity or misconduct.

### Termination for misconduct

**What fair process requirements exist?**
The law requires that the dismissal must not only be for a valid reason related to the conduct of the worker, but the employer is equally required to follow fair procedure in effecting the dismissal. As a legal requirement, the worker should be notified of the allegations using a form and language that are understandable. The worker is entitled to a reasonable time to prepare and at the hearing, the worker must be afforded the opportunity to state their own case in defence against the allegations. A finding must be made within a reasonable time and communicated to the worker. In case of dismissal, a worker is entitled to be furnished with a written statement of the reasons for the dismissal.

**What substantive fairness requirements exist?**
The law requires a valid reason. A valid reason includes the employee's misconduct (employee's unacceptable conduct) and sometimes the employee's incapacity to perform.

**What are the applicable notice periods?**
Section 130(1) of the Labour Act provides that either party may terminate the contract upon giving the following notice:

- where a worker has been continuously employed for one year or more, one month's notice;
- where a worker has been continuously employed for more than six months but less than one year, a fortnight's notice; and
- where a worker 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 matters that are to be determined in terms of labour laws or provisions of the Labour Act. However, the proper forum for unfair dismissal resulting from the conduct of a worker is the Directorate of Dispute Prevention and Resolution (DDPR).

**What remedies are available to employees?**
Where a worker has been unfairly dismissed for misconduct, the arbitrator may make an order of reinstatement where practicable or an award of compensation that is just and equitable in the circumstances of the case. Also, under a reading of section 144, read with section 40(1) (which deals with powers of arbitrators), re-employment is contemplated even though section 144 is silent on the re-employment remedy.

**Is third party approval for termination/ termination documents required?**
Not required.

### Termination for incapacity

**What fair process requirements exist?**
Termination on the grounds of ill health or injury or in the context of poor work performance constitutes incapacity.

**PROCESSING OF INFORMATION IS SUBJECT TO THE PROVISIONS OF THE DATA PROTECTION ACT.**

In the context of ill health or injury, the law requires the employer to investigate possible alternatives that are short of dismissal. During this exercise, the employer is expected to consult with the employee. It is required of the employer to afford the employee the opportunity to propose alternatives to dismissal. The alternatives proposed by the employee must be considered by the employer and, if rejected, the employer has to furnish the employee with reasons for such.

Before terminating an employee for incapacity in the context of poor work performance, the law requires the employer to investigate the cause of unsatisfactory performance and provide the employee with guidance or training. The employee must also be given a reasonable opportunity to improve their performance.

Poor work performance does not always amount to incapacity; it can also amount to misconduct.

**What substantive fairness requirements exist?**
When terminating an employee on account of incapacity, the law requires the employer to take into account factors such as the cause of ill health or injury, the degree of incapacity, the temporary or permanent nature of the incapacity, the ability to accommodate the incapacity and the existence of a pension or compensation for the ill health or injury.

When determining the fairness of a dismissal resulting from poor work performance, the law requires consideration of whether the employee was aware of the required performance standards; whether the performance standards are reasonable; the reasons that caused the employee to fail to meet the performance standards; and whether the employee was afforded the opportunity to meet the required performance standards.

**What are the dispute resolution mechanisms?**
The Labour Court has exclusive jurisdiction over matters that are to be determined in terms of labour laws or provisions of the Labour Act. However, the proper forum for unfair dismissal resulting from the incapacity of a worker is the DDPR.

**What remedies are available to employees?**
Where a worker has been unfairly dismissed for incapacity, the arbitrator may make an order for their reinstatement or compensation. Also, under a reading of section 144, read with section 40(1) (which deals with powers of arbitrators), re-employment is contemplated even though section 144 is silent on the re-employment remedy.

**Is third party approval for termination/ termination documents required?**
Yes. Insofar as it relates to incapacity due to ill health. A registered medical practitioner must certify that the employee is unable to work due to ill health or injury.

## Termination for operational requirements

**What fair process requirements exist?**
Termination for operational requirements is scrutinised procedurally and substantively. Once the employer contemplates retrenchment of workers as a result of operational requirements, the process of consultation with the workers must be initiated. The purpose of consultation with workers is to engage in a meaningful joint problem-solving exercise to decide on the following:

- alternatives to dismissals;
- selection criteria for workers to be terminated;
- timing of the dismissal;
- steps to minimise the dismissal;
- steps to avoid adverse effects of the dismissal;
- conditions on which dismissal shall take place; and
- re-hiring conditions.

The parties are expected to carry out the consultations in good faith.

**What substantive fairness requirements exist?**
The law requires that there must be a valid reason for terminating workers for operational requirements. Several reasons may form the basis for dismal as a result of operational requirements but most notable is the re-organisation or restructuring of a business for economic or technological reasons.

**What are the dispute resolution mechanisms?**
The law requires that the dispute must first be conciliated at the DDPR before it is referred to the Labour Court, which has exclusive jurisdiction to hear and determine disputes arising out of termination for operational requirements.

**What remedies are available to employees?**
Where a worker has been unfairly dismissed for operational requirements, the Labour Court may make an order of reinstatement where practicable or an award of compensation that is just and equitable in the circumstances of the case. Even though section 144, read with section 40(1), contemplates re-employment, section 144 is silent on the remedy of re-employment.

**Is third party approval for termination/ termination documents required?**
This is not required.

**Is it permissible to offer employees a voluntary separation package during a redundancy process? Does this undermine the legitimacy of the retrenchment/ redundancy process?**
Yes. The purpose of a joint problem-solving exercise is to agree on alternatives to dismissal. As part of the alternatives, the employee may be offered a voluntary separation package and this does not undermine the legitimacy of the retrenchment/redundancy process.

## Notice requirements

The notice period under section 130 (1) of the Labour Act applies as follows:

- where a worker has been continuously employed for one year or more, one month's notice;
- where a worker has been continuously employed for more than six months but less than one year, a fortnight's notice; and
- where a worker 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?**
None.

**Are any termination benefits payable in the event of a dismissal for incapacity?**
Severance pay as provided for under section 136(1) of the Labour Act.

**Are any termination benefits payable in the event of a dismissal for operational requirements?**
Retrenched workers are entitled to severance pay if they have had the same employer for at least one continuous year (section 136(1) of the Labour Act). The employer will then pay a worker the equivalent of two weeks' pays (the pay the worker receives at the time of the termination of the contract) for every completed year service.

**How is severance pay calculated?**
Two weeks' wages for each completed year of continuous service with the same employer.

**Are any termination benefits payable in the event of voluntary resignation by an employee?**
A worker 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. Where the employer operates a separation benefit scheme that provides more advantageous benefits than severance, the employer can choose to pay that other separation benefit. This is in accordance with section 136(5) of the Labour Act.

**Are any termination benefits payable in the event of retirement?**
A worker who has completed more than one year of continuous service with the same employer shall be entitled to severance payment. The employer may choose to pay a worker a separation benefit if it provides more advantageous benefits than severance payment. In terms of section 136(1) of the Labour Act, a worker cannot claim both severance and other separation benefit unless the employer is willing to pay both.

**TWO WEEKS' WAGES**
**FOR EACH COMPLETED YEAR OF CONTINUOUS SERVICE WITH THE SAME EMPLOYER.**

## RETIREMENT

**What is the normal retirement age?**
There is no fixed retirement age prescribed by the Labour Act. The retirement age will depend on the practice of the employer and the industry in which the employer operates. Section 130(2)(e) of the Labour Act recognises that the employer shall set a retirement age applicable to all workers, but a minimum must be 60 years.

## 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.

### 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 regulates 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.

**THERE IS NO FIXED RETIREMENT AGE PRESCRIBED BY THE LABOUR ACT.**

# MALAWI

| | |
|---|---|
| Official language(s): | English |
| Population (approx.): | **20,7 million (as of December 2023)** |
| Unemployment rate (2024): | 5.1% |
| 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

- The Constitution of the Republic of Malawi (Constitution)
- Employment Act (Chapter 55:01) of the Laws of Malawi (Employment Act)
- Employment (Amendment) Act 2021 (Employment Amendment Act)
- Pension Act 6 of 2023 (Pension Act)
- Labour Relations Act (Chapter 54:01) of the Laws of Malawi (Labour Relations Act)
- Workers' Compensation Act (Chapter 55:03) of the Laws of Malawi (Workers Compensation Act)
- Occupational Safety, Health and Welfare Act (Chapter 55:07) of the Laws of Malawi

### Regulatory rating

*Heavily regulated.*

# Singano Purshotam Law Consultants

Singano Purshotam Law Consultants was established by Duncan Singano and Reena Purshotam. Both are lawyers with over two decades of experience each in corporate and commercial work.

Duncan and Reena are both highly rated by Chambers Global, the independent worldwide directory of legal practitioners. Singano Purshotam is the only law firm in Malawi to be rated as a Band 1 firm (highest recognition) in the Chambers Global 2023 rankings. Singano Purshotam Law Consultants has expertise in a wide range of transactions. The firm is able to offer unique insight into the opportunities and intricacies of Malawi's economic and legal environments. The team at Singano Purshotam Law Consultants has experience with projects in multiple areas of practice. Our extensive expertise in most areas is unparalleled in Malawi, and our lawyers remain the primary choice for both international and domestic clients seeking proficiency in these fields.

**Duncan Singano**
Partner

**Michelle Nkhono**
Associate

**Contact:** splaw@splaw.mw

## TRENDS

### General

Malawi has transitioned through various political systems, from the colonial era to a single-party system, and presently, to a constitutional democracy. Labour relations have likewise evolved under these different governance systems. The multi-party era ushered in a new labour law system that views labour as a matter of human rights. The Government has assumed a pivotal role in setting and enforcing the basic conditions of employment relationships. Unlike other countries, such as South Africa and Nigeria, where industrial relations have developed from academia, in Malawi, court rulings serve to raise awareness among the populace. These rulings are documented in a specific labour law publication, known as the Malawi Labour Law Reports (MLLR). The principles of labour law have been shaped by these court rulings.

Court decisions have played a crucial role in shaping the principles of labour law in Malawi, with a high likelihood that future court rulings will continue to influence the evolution of labour law in the country. Currently, it can be argued that the courts often apply a rights-based approach in handling labour disputes. This approach argues in favour of the need to address labour issues as a matter of fundamental human rights. As the country's economic situation develops, this approach could also include a more economic efficiency rationale which argues that labour laws can play a critical role in the socio-economic development of a country.

### The introduction of artificial intelligence in the workplace

The introduction of artificial intelligence (AI) in the workplace in Malawi is a topic of growing interest. One of the major challenges faced is that technology (in general), including AI, is not accessible to most people in Malawi. Access to a smartphone, which plays a significant role in people having access to the latest technological advancements is a major challenge. However, there are efforts being made to educate people about the latest technological trends and as more people start engaging with data on the internet (i.e. using social media platforms and video logs), Malawi will be open to new possibilities for different AI sub-fields.

### Data protection and privacy

Prior to 2024, Malawi lacked a robust, enacted data protection regime. The applicable data protection regimes were those embedded in the Constitution and outlined within the Electronic Transactions and Cyber Security Act (Chapter 74:03) of the Laws of Malawi. In 2024 the legislature passed the Data Protection Act 3 of 2024 (Data Protection Act) which is an umbrella law on the protection of security of personal data, with provisions such as reporting obligations in the event of a data leak. The act was assented to in February 2024, however as of April 2024, the relevant minister has not yet issued a notice of commencement to bring the act into operation.

### Remote working and its implications for the payment of taxes where employees work from another jurisdiction

As the world becomes more interconnected through technology, professionals in Malawi are finding remote work to be an increasingly feasible choice. Particularly in sectors like IT, digital marketing and customer support, the trend of working remotely is on the rise. Remote working remains unregulated in Malawi.

The Taxation Act (Chapter 41:01) of the Laws of Malawi provides that for tax assessable income, the income of a person shall include the total amount in cash or otherwise received by or accrued to or in favour of a person from a source within or deemed to be within Malawi. Income deemed to have accrued in Malawi includes income received by a person in or out of Malawi who may claim (or would otherwise claim) a deduction for such amount, in connection with a permanent establishment in Malawi, as remuneration for services rendered or work of labour done. A "*permanent establishment*" includes an office or

other fixed place of business through which business activity is carried on. As such, an employee working from another jurisdiction for a Malawian entity that pays the employee remuneration would, for tax purposes, be assessed according to Malawian tax laws.

## HIRING DECISIONS

### Pre-hire checks

**Can employers conduct pre-employment checks?**

There are no restrictions on pre-hire checks being conducted by employers, provided they are not carried out in a manner that amounts to discrimination.

### Hiring options

**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.

**Is there a concept of dual employment or deemed employment in Malawi? In what instances would this apply?**

The concept of dual employment, also known as holding multiple jobs or moonlighting is not uncommon in Malawi. There are no specific labour laws or regulations in Malawi in relation to dual employment. However, the situation is different when it comes to certain professions. For instance, the profession of law is regulated by an independent body, the Malawi Law Society (MLS). According to Chapter 13 Rule 5 of the MLS Code of Ethics, a lawyer in corporate or government service is not permitted to undertake work for or on behalf of any person other than the corporation that employed them. If a lawyer in corporate or government service wishes to practice independently of their employer and the employer so consents, the lawyer would be required to have separate offices of their own and to comply with the Legal Practitioner's Practice Rules.

Deemed employment is a concept which has been a point of debate in Malawian courts. As a starting point, section 3 of the Employment Act defines an employee as;

- a person who offers their services under an oral or written contract of employment, whether express or implied;
- any person who performs work or services for another person for remuneration or reward on such terms and conditions that they are in relation to that person in a position of economic dependence on, and under an obligation to perform duties for, that person more closely resembling the relationship of employee than that of an independent contractor.

This means that a contract of employment can be construed from the conduct of parties towards each other. In *Chisowa v Ibrahim Cash 'n Carry* [2008] MLLR 384 (IRC), the Industrial Relations Court (IRC) found that an employment contract exists even where the parties did not draw up a written agreement, and that by virtue of section 27 of the Employment Act, it is the duty of the employer to draw up the terms of employment and give them to the employee.

### 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 new employees.

Before foreign employees can commence work in Malawi, a temporary employment permit needs to be issued by an immigration officer, subject to meeting the requirements to be a permit holder.

## 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 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 rules applicable to the employee.

**Are zero-hour contracts permissible (contracts without a minimum set of working hours or any basic salary undertaking)?**
Section 36 of the Employment Act provides that an employee's normal working hours should be set out in the employment contract. While maximum daily working hours are set by the act, it is silent on a minimum set of working hours.

### Probation

**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 12 months. During the probation period, either party may terminate the employment relationship at any time, without notice.

**Are fixed-term contracts 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. A contract that is for the completion of a specified task shall terminate on the completion of the task. In either instance, no notice is required from either party for termination.

Where a contract for a specified time frame or task is used to fill a post that 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 24 hours, the contract shall be deemed to be a contract of employment for an unspecified period of time i.e. a permanent contract.

**AN EMPLOYMENT CONTRACT IN RESPECT OF A SKILLED EMPLOYEE MAY CONTAIN A PROBATIONARY PERIOD.**

## 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.

### Is there a minimum wage requirement?

The Ministry of Labour is empowered to issue regulations or orders as to the minimum wage. As of 2024, the minimum wage is MWK 3,461 per day in both rural and urban areas (MWK 90,000 per month).

### 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 48 hours during any week, excluding any overtime. Further, employers are not permitted to require employees to work for more than six consecutive days without a period of rest, comprising of at least 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 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 they are remunerated appropriately for the overtime.

### What are the minimum requirements relating to overtime?

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 normal hourly wage.
- Day off overtime, for time worked by an employee on a day on which they would otherwise be off duty; which is paid at the hourly rate of not less than twice the normal hourly wage.
- Holiday overtime, for time worked on a public holiday, which is paid at the hourly rate of not less than twice the normal hourly wage.

This is subject to section 36(4) of the Employment Act, which provides that no employer shall require or permit an employee to work for more than six consecutive days without a period of rest of at least 24 consecutive hours. A further limitation is found in section 37, which provides that a guard (or shift worker) may not be required to work for more than eight hours on any day. Furthermore, any employee (other than a guard or shift worker) who normally works not more than five days during a week will be required to work more than 12 hours on any day, or who normally works six days a week to work for more than eight hours on any day.

### What are the weekly rest and public holidays requirements?

Each employee will be entitled to a weekly rest of 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:

- If they work a six-day week, 18 working days.
- If they work a five-day week, 15 working days.

Annual leave must be taken within six months of the entitlement falling due.

Leave may be deferred and accumulated by mutual agreement between the employee 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.

**THE MINISTRY OF LABOUR IS EMPOWERED TO ISSUE REGULATIONS OR ORDERS AS TO THE MINIMUM WAGE.**

**TERMS AND CONDITIONS OF EMPLOYMENT MAY NOT BE CHANGED WITHOUT THE EMPLOYEE'S CONSENT.**

**What are the minimum requirements relating to sick leave?**
Section 46 of the Employment Act provides that an employee who has completed one year's continuous service with the same employer is entitled to four weeks of sick leave on full pay, and thereafter eight weeks of 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 weeks of maternity leave on full pay in every three-year cycle. Section 47 has been amended by the Employment Amendment Act. It now provides that, in the event of illness arising out of pregnancy confinement affecting either the employee or their child, an employer shall grant an employee additional maternity leave as recommended by the registered medical practitioner.

The Employment Act has also been amended to provide for paternity leave. Section 47 now provides that a male employee shall be entitled, once every three years, to at least two weeks of paternity leave on full pay.

**What are the minimum requirements relating to family responsibility leave?**
Family responsibility leave is not provided for under Malawian 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 and can also be included as a contractual term in the contract of employment.

**What statutory payments is an employer required to make in relation to employees, including deductions from employees' salaries and employer contributions, such as unemployment insurance to cover periods of unemployment?**
Under Malawian employment law, employers are required to make several statutory payments in relation to their employees. These include deductions from employees' salaries as well as employer contributions to statutory schemes.
In terms of income tax, employers are required to withhold Pay-As-You-Earn (PAYE) tax from employees' earnings and remit it to the Malawi Revenue Authority under the Taxation Act.

Additionally, employers are required to make contributions to the national pension scheme as prescribed under the Pension Act. The Pension Act provides that employers must enrol employees into a mandatory pension scheme within 30 days of employment, deduct employee contributions, and make

corresponding employer contributions. The minimum contribution rates under the act are currently 5% by the employee and 10% by the employer, although higher contributions are permissible.

At present, Malawi does not operate a statutory unemployment insurance scheme that provides income support during periods of unemployment. Consequently, employers are not required to make contributions to such a fund. However, employees who lose their jobs may be entitled to terminal benefits such as severance pay, pension payouts or redundancy packages, subject to the terms of the Employment Act and any applicable contracts or collective agreements.

## Changing terms and conditions of employment

**Are employees automatically entitled to periodic increases; alternatively, how do the parties normally achieve consensus on increases?**
Although it is not a legal requirement, the parties can agree to periodic increases.

**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?**
Engaging trade unions or representative organisations of workers in Malawi is not a common occurrence among employees.

**What are the legal requirements concerning trade unions and worker organisations, including registration obligations, organisational rights, and entitlements to represent employees in the workplace?**
The Constitution enshrines the rights of workers to freely associate and form trade unions. Section 31(2) of the Constitution provides that *"all persons shall have the right to form and join trade unions or not to form or join trade unions"*. Section 32 further reinforces this position by providing that *"every person shall have the right to freedom of association, which shall include the freedom to form associations"*. These constitutional provisions establish the legal foundation for trade unionism and are echoed in Malawi's labour legislation.

Under the Labour Relations Act, employees have the right to form, join and participate in the lawful activities of trade unions. Trade unions must be registered with the Registrar of Trade Unions and must submit a constitution and demonstrate that they have at least 100 members. Once registered, a trade union may apply for recognition by an employer for collective bargaining purposes, provided it represents at least 20% of the workforce or a specific category of employees with a significant community of interest. Section 25(1) of the Labour Relations Act requires employers to recognise such unions for collective bargaining. However, under section 25(2), senior managerial staff are expressly excluded from being considered *"employees"* for the purpose of collective bargaining under this provision.

Nevertheless, section 25(3) allows senior managerial staff to form their own trade union and requires an employer to recognise that union if it meets the 20% threshold among senior staff. This reflects the law's accommodation of trade union rights for all levels of employees, including management.

## SOCIAL BENEFITS, TAX AND

**DISMISSAL BASED ON INCAPACITY IS A VALID GROUND FOR DISMISSAL.**

## 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?**
PAYE is a method of collecting income tax from employees on their earnings in Malawi. Any employer that pays an employee in excess of MWK 100,000 per month or MWK 1,2 million per year is liable to deduct PAYE and remit it to the Malawi Revenue Authority.

Monthly PAYE is taxed as follows:

- the first MWK 100,000 is not taxed (i.e. 0%)
- The next MWK 230,000 is taxed at 25%
- The next MWK 2,670,000 is taxed at 30%
- The Malawi Government introduced an additional bracket of 35% for any employee whose salary is above MWK 3 million per month.

**Do employees who work remotely from a foreign jurisdiction and pay taxes in their country of residence, require a Malawian work permit to render services to a Malawian entity?**
The Immigration Act (Chapter 15:03) of the Laws of Malawi provides that temporary employment permits (TEP) are issued to applicants who intend to reside in Malawi for the purpose of engaging in an occupation. It is therefore our understanding that, unless an employee has the intention to work within Malawi, there is no requirement for a TEP.

### 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 amount of an employee's salary to the National Pension scheme and the employee must contribute 5%.

Employers are also obliged to remit to the Malawi Revenue Authority 1% of the basic annual payroll paid to employees as part of the technical, entrepreneurial and vocational education and training levy (TEVET levy). The purpose of the TEVET levy is to fund approved technical education and training programmes in Malawi, special programmes to support the technical education and training system, and user-free subsidisation through scholarships, grants and loans. The levy is also used to fund incentives to employers to directly invest in technical education and training, an endowment fund to support technical education and training, and government and management structures of the technical education and training system.

### Skills development

**What legislative frameworks exist to**

**support workforce skills development, including strategies for upskilling, learnership provisions, financing for skills development, and the regulation of employment services?**

In Malawi, the principal legislative and policy frameworks for workforce skills development are found under the Technical, Entrepreneurial and Vocational Education and Training (TEVET) Act and related national strategies. The TEVET Authority (TEVETA) is mandated by law to regulate, promote and facilitate the development of technical and vocational skills across various sectors. Employers are obligated to contribute to the TEVET levy, which finances the training of apprentices and the upskilling of workers through certified training providers.

The TEVET framework supports learnerships, apprenticeships and employer-sponsored training programmes aimed at improving employability and productivity. TEVETA works in collaboration with industry stakeholders to identify skill gaps, design occupational standards and ensure that training is responsive to labour market needs. In addition, Malawi's National Employment and Labour Policy, along with the National Youth Policy and other sector-specific strategies, promote skills development as a means to address youth unemployment and support inclusive economic growth. Employment services such as job matching, career counselling and labour market information dissemination are regulated under the Employment Act and co-ordinated through the ministry responsible for labour.

### Affirmative action

**What affirmative action obligations do employers have under the law, and what measures must they implement to ensure compliance?**

Section 20 of the Constitution prohibits discrimination of persons in any form and guarantees equal and effective protection against discrimination on a wide range of grounds, including race, sex, religion, disability and social origin.

This constitutional guarantee is implemented in the Employment Act, particularly in Part II, which sets out the fundamental principles of labour rights. Section 5 of the act explicitly prohibits discrimination against any employee or prospective employee on grounds such as race, sex, language, political opinion, ethnic or social origin, disability, or family responsibility. Discrimination is prohibited in respect of recruitment, training, promotion, terms and conditions of employment, termination, and all other matters arising out of the employment relationship.

In addition, section 6 of the Employment Act requires every employer to pay equal remuneration for work of equal value, without any form of distinction or discrimination. Where a violation is alleged, the burden is placed on the employer to prove that no breach has occurred. These provisions ensure that pay equity is not only a legal requirement but also a mechanism through which employers can address structural imbalances in the workplace.

The remedies for any infringement of the above rights are provided for in section 7, which empowers the courts to order reinstatement, restoration of benefits or advantages, or the payment of compensation to affected employees. These remedies support the enforceability of affirmative action principles and anti-discrimination obligations.

While there is currently no separate statute mandating affirmative action quotas or sector-wide employment equity plans, the Employment Act provides a clear legal foundation for employers to adopt inclusive policies and targeted interventions.

## DATA PRIVACY

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

The Electronic Transactions and Cyber Security Act (Chapter 74:02) of the Laws of Malawi 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 and maintain trust and fidelity, which encompasses the obligation to protect employees' personal information.

The Data Protection Act, once in

operation, will provide for a more robust data protection regime. For instance, the act will provide for the following:

- **Lawful and fair processing of personal data:** This means that employers must have a legitimate reason for collecting and using personal data, and they must do so in a way that doesn't infringe on the rights of the individual.
- **Data security:** Employers are required to implement appropriate technical and organisational measures to ensure the security of personal data.
- **Data accuracy:** Employers have an obligation to ensure that the personal data they process is accurate and, where necessary, kept up to date.

## 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(2) of the Employment Act, where an undertaking or a part thereof is sold, transferred or otherwise disposed of, the contract of employment of an employee in employment at the date of the disposition shall automatically be transferred to the transferee and all the rights and obligations between the employee and the transferor at the date of the disposition shall continue to apply as if they had been rights and obligations between the employee and the transferee, and anything done before the disposition by or in relation to the transferor in respect of the employee shall be deemed to have been done by or in relation to the transferee.

**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?**
There will be no joint and several liability.

**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?**
The Pension Act does not provide for a specific retirement age. It stipulates that 'retirement age' means the age stipulated in the conditions of service of employment, and where there are no conditions of service of employment, the retirement age shall be between 50 and 70.

**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 benefits under the Pension 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?**
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. This is also a provision that can be including as a term in the contract of employment.

## TERMINATION OF EMPLOYMENT

### Introduction

The law recognises three grounds for valid dismissal – conduct or capacity of the employee or the employer's operational requirements.

## Termination for misconduct

**Can an employee be dismissed for misconduct?**
Yes. This 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 month's notice;
- where an employee is paid on a fortnightly basis, they are entitled to a fortnight's notice when they have been employed for less than five years; and
- where an employee is paid on a fortnightly basis, they are entitled to one month's notice if they have been continuously employed for at least five years.

Where an employee is paid on a weekly basis they are entitled to notice of termination as follows:

- one week's notice where the employee has been employed for less than two years;
- a fortnight's notice where the employee has been continuously employed for a period of not less than two years but not exceeding five years; and
- one month's notice where the employee has been continuously employed for at least five years.

Where an employee is paid on a daily or hourly rate, they are entitled to notice of termination on the following basis:

- one day's notice where the employee has been employed for less than six months.
- one week's notice where the employee has been continuously employed for a period more than six months but not exceeding two years;
- a fortnight's notice where the employee has been continuously employed for a period of more than two years but less than five years; and
- one month's notice where the employee has been continuously employed for a period of at least five years.

## Termination for incapacity

**Can an employee be dismissed for incapacity?**
Yes. Dismissal based on incapacity is a valid ground for dismissal.

**What notice periods are applicable?**
The same notice periods outlined above for termination for misconduct are applicable for termination for incapacity.

**What dispute resolution mechanisms are available to the employee when the employee is dismissed for misconduct or poor work performance?**
Within three months of the date of dismissal, an employee shall have the right to refer a dispute to the District Labour Officer alleging that they have been unfairly dismissed. A person alleging violation of a provision of the Employment Act may directly present their complaint to the IRC for relief.

**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.

## Termination for operational requirements

**Can an employee be dismissed for operational requirements?**
Yes. Dismissal based on an employer's operational requirements is permitted.

**DISMISSAL BASED ON INCAPACITY IS A VALID GROUND FOR DISMISSAL.**

**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 the act, where an employee has served not less than one year, but not more than five years with the same employer, they are entitled to two weeks' wages for each completed year of service, including the fifth year. Where an employee has worked for more than five years but not more than 10 years, the employee will be entitled to two weeks' wages for each completed year of service for the first five years, plus three weeks' wages for each completed year of service from the sixth year up to and including the tenth year. Further, where the employee has been employed with the same employer for more than 10 years, they are entitled to two weeks' wages for each completed year of service for the first five years, plus three weeks' wages for each completed year of service from the sixth year up to and including the tenth year, plus four weeks' wages for each completed year of service from the eleventh year onwards.

**What dispute resolution mechanism are available to the employee when the employee is dismissed for operational requirements?**
Within three months of the date of dismissal, an employee shall have the right to refer a dispute to the District Labour Officer alleging that they have been unfairly dismissed. A person alleging violation of a provision of the Employment Act may directly present their complaint to the IRC for relief.

**Employee remedies?**
The remedies available are reinstatement, re-engagement or compensation.

**Is third-party approval required for termination/termination documents?**
This is not specified in the Employment Act.

**Is it permissible to offer employees a voluntary separation package during a redundancy process? Does this undermine the legitimacy of the retrenchment/ redundancy process?**
Section 57(1) of the Employment Act provides that the employment of an employee shall not be terminated by an employer unless there is a valid reason, including based on the operational requirements of the undertaking,

Operational requirements may be in connection with the employer's economic status. The employer must establish a prescribed system to be followed in the case of a retrenchment/redundancy as it is a requirement that the employer should produce documents to prove that a process was followed before implementing the retrenchment/redundancy. This could include a system involving weighting, points or criteria which would allow employees facing retrenchment to be assessed according to an objective process.

In *Chazika v Bata Shoe Company*, the court held that the applicant's termination was unfair because the respondent did not comply with the law on the basis that no information was given on the nature of the restructuring. The court outlined that the practice in Malawi is that when companies contemplate restructuring that would involve termination of employment, a company needs to notify the Ministry of Labour and Vocational Training. The information that is required to accompany the notification includes the rationale and justification for such intentions, the time frame within which the exercise would take place and a systematic modus operandi of how the exercise will be carried out.

In our understanding, the law does not provide guidelines as to what a systematic modus operandi would entail and therefore offering employees voluntary separation packages, in our view, would not undermine the legitimacy of the retrenchment/redundancy process as long as an employer can show that it carried out a transparent assessment exercise to determine which positions needed to be made redundant and which employees needed to be retrenched.

## RETIREMENT

**What is the normal retirement age?**

The Pension Act does not provide for a specific retirement age. It stipulates that "*retirement age*" means the age stipulated in the conditions of service of employment, and where there are no conditions of service of employment, the retirement age shall be between 50 and 70 years.

**Are any termination benefits payable in the event of retirement?**

If the employee has made contributions to an employer for 20 years, they are entitled to the benefits under the Pension 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?**

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 principle 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. This is also a provision that can be including as a term in a contract of employment.

# MAURITIUS

| | |
|---|---|
| Official language(s): | English |
| Population (approx.): | **1.3m** |
| Unemployment rate (2024): | **5.6%** |
| Name of court for labour matters: | Industrial Court of Mauritius and the Employment Relations Tribunal |
| 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

- Workers' Rights Act 20 of 2019 (Workers' Rights Act)
- Occupational Health and Safety Act 28 of 2005
- Non-Citizens (Employment Restriction) Act 15 of 1970
- Additional Remuneration and Other Allowances Act, 2019 (Additional Remuneration and Other Allowances Act)
- Employment Relations Act 32 of 2008, as amended
- National Minimum Wage Regulations, 2024
- Data Protection Act, 2017 (Data Protection Act)
- End of Year Gratuity Act 21 of 2001
- Employment Relations Amendment Act 21 of 2019

### Regulatory rating

*Heavily regulated.*

**Preeti Gokulsing**
Managing Partner

# FFooks Gokulsing

John W FFooks & Co is a full-service corporate & commercial law firm providing exclusively local counsel advice, support to business and industry across French-speaking Africa. Our fully bilingual team, comprised of 10 partners and 40 lawyers, is the only legal practice in the region supplying Napoleonic advice with a Common Law understanding of client imperatives.

Our practice in Mauritius licenced as FFooks Gokulsing, a British-educated and Mauritian-law qualified barrister with over 25 years of experience in commercial and corporate law. Preeti's team in Mauritius consists of several barristers, attorneys, notaries and solicitors acting as associates and working partners.

**Contact:** preeti@jwflegal.com

## TRENDS

### General

Mauritius has implemented a comprehensive set of laws which aim to strike a balance between the rights of employees and employers. The Workers' Rights Act, as amended, and the ensuing regulations aim to protect workers.

### The introduction of artificial intelligence in the workplace

One of the advancements in technology that Mauritius seeks to achieve is through the introduction of artificial intelligence (AI) in the workplace. Although there is no legislation to implement the use of artificial intelligence in the workplace, some companies have taken the step to make use of AI technology in order to boost their productivity.

### Data protection and privacy

The Data Protection Act provides the legal framework for data protection and privacy of employees. Employers are prohibited from collecting and processing data without the consent of employees unless it is required by law. Employers are obligated to register as either controllers or processors of data with the Data Protection Office. Moreover, companies should ensure that they have taken reasonable measures to safeguard the data of their employees and any other forms of data.

### Remote working and its implications for the payment of taxes where employees work from another jurisdiction

According to the Worker's Rights Act, workers are permitted to work from home. However, the concept of remote working does not form part of Mauritian legislation. Employees working remotely would be required to pay taxes in Mauritius if their contract of employment is governed by Mauritian law. If the services are provided in Mauritius but the place of work is another jurisdiction, then the employees would not be required to pay taxes in Mauritius but in that jurisdiction.

**PRE-HIRE CHECKS ARE PERMISSIBLE IN MAURITIUS.**

## 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.

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 of Labour and Industrial 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 employees 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.

**Is there a concept of dual employment or deemed employment in Mauritius? In what instances would this apply?**

There is deeming agreement under section 12 of the Workers' Rights Act. Dual employment is allowed provided that it is expressly stated in the contract of employment and with the consent of the employer.

### Pre-checks

**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.

### Hiring options

**What hiring options are available to employers?**

The following hiring options are available to employers:

- Deeming work agreement: This is an agreement in terms of which an employee is required to perform tasks specified by the employer on the day they are asked to report for duty. This is a flexible working arrangement and allows employers to use a worker for various tasks that may arise, rather than employing an employee for a specific role.
- Full-time work agreement/permanent employment.
- Apprenticeship agreement: An agreement for the training and development of a worker.
- Fixed-term agreement: 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 agreement: An agreement in terms of which a worker is paid with reference to the number of hours worked.
- Agreement to perform part-time or full-time work: In terms of section 15 of the Workers' Rights Act, a full-time employee 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 employee has the option to revert to full-time employment. In addition, a part-time employee 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 agreement: A worker may enter into a *"compromise"* agreement with their employer as a means to resolve a dispute in relation to their 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 of Labour and Industrial Relations.
- Atypical work agreement: 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 home worker, (ii) an online platform worker or (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.

**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 employee, 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 if they are in possession of a valid work permit and they are engaged in the work specified in the 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 made to the Economic Development Board, which will review the application and consider whether to accept or reject it.

## EMPLOYMENT CONTRACT FORMALITIES

**Are there any formal requirements for employment contracts?**

An employer shall provide every employee 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 commencing. 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 of Labour and Industrial 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  in intervals exceeding one 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, under section 7 of the Minimum Wage Regulations, 2017, any agreement in terms of which a worker contracts out of their 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 people 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 zero-hour contracts permissible (contracts without a minimum set of working hours or any basic salary undertaking)?**

The normal working week for every employee, other than a part-time worker or a garde malade shall consist of 45 hours in any week, or stipulated working hours, excluding time allowed for meals and tea breaks. Zero-hour contracts or not having a minimum set of working hours is not permissible under the current legislation. Mauritian law does not provide for contracts regarding basis salary undertaking.

**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 employee may choose to extend the probation period or terminate the employment relationship after such probation period.

**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.**

## CONDITIONS OF EMPLOYMENT

### Minimum employment rights

**Are any workers excluded from minimum employment rights?**

The following people 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 a private-public partnership with the purpose of placing job seekers in employment;
- people whose basic wage/salary rate is in excess of MUR 600,000 per annum, subject to certain limitations; and
- people 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 or 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, 2024, the national minimum wage of all employees other than part-time workers is MUR 16,500 per month. The National Minimum Wage regulations do not, however, entitle an employer to reduce a worker's remuneration to the minimum wage, nor do they 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 employee 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 employee, other than a person employed as a caregiver or private nurse in exceptional/special circumstances, shall be required to work more than 12 hours per day.

All employees 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 22h00 and 05h00.

**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, they 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;
- double a worker's normal rate for overtime worked on a public holiday during normal working hours on a weekday; and
- three times a worker's normal rate for overtime worked in a public holiday after normal working hours.

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 employee's 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 are the weekly rest and public holiday requirements?

The stipulated weekly rest day is Sunday. However, where an employer operates seven days a week due to its operational requirements, the weekly rest day shall be two Sundays in a month. All employees 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 they remain in continuous employment, be entitled to 20 working days' annual leave. An additional two days of 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 their employer at least 48 hours' advance written notice. A worker can choose to have the untaken annual leaves paid or accumulated provided that they inform the employer in writing.

### What are the minimum requirements relating to sick leave?

A worker who works for a continuous period of 12 months for an employer is entitled to 15 working days of sick leave on full pay. Additional sick leave must be duly certified by a medical practitioner and may be deducted from the employee's accumulated sick leave and shall be on full pay. Any outstanding sick leave shall be accumulated.

Where a worker is absent on grounds of illness, they shall, unless reasonable cause is shown and except where the employer is aware of the nature of the illness, notify their employer of their illness on the first day they are absent.

### 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, is, on production of a medical certificate, entitled to 14 weeks of 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 who is younger than 12 months old, the employee 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 employee 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 MUR 3,000, payable within seven days of giving birth.

A female worker who suffers a miscarriage which is duly certified by a medical practitioner shall be entitled to three weeks of leave followed by an additional five days of leave, both on full pay, immediately after the miscarriage.

A female employee who gives birth to a stillborn child, shall, on production of a medical certificate, be entitled to 14 weeks' leave on full pay.

A male employee who has been in continuous employment with the same employer for a period of 12 months, shall be entitled to five continuous working days of paternity leave when their spouse gives birth to a child or when he or his spouse adopts a child who is younger than 12 months old. Entitlement to paternity leave shall begin within two weeks from the date of birth of a child, from the date of discharge after childbirth of the mother or other medical institution, or from the date of the adoption of the child, as the case may be.

In order to access paternity leave benefits, a male employee 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 or, in the case of adoption, a certified copy of the relevant court order and the birth certificate of the child.

### 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:

- six working days of special leave on full pay on the occasion of the celebration of their first civil or religious marriage;
- three working days of special leave on full pay on the occasion of the first civil or religious marriage of their son or daughter; and/or
- three working days' special leave on full pay in the event of death of a spouse, child, parent or sibling.

**A WORKER SHALL BE GRANTED LEAVE TO ATTEND COURT REGARDING ANY MATTER IN WHICH HE IS A PARTY OR A WITNESS.**

## 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 five years or more. A worker is entitled to a maximum of 30 days of vacation leave, whether taken consecutively or otherwise, for every period of five consecutive years of continuous employment.

*Juror's leave*

A worker is entitled to juror's leave where they have been 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 sporting event, the employee is entitled to paid leave to participate in the 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 it 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.

*Leave to care for child, parents, grandparents with healthcare-related issues*

A worker shall be granted leave with pay to be reckoned, at their choosing, against any paid annual leave, sick leave or vacation leave entitlement to care for their child, including their adopted child, parents or grandparents, having healthcare-related issues. A worker shall be granted such leave provided that they notify their employer on the first day of their absence, they produce their birth and marriage certificate, the birth certificate of their spouse and the birth certificate of the child or adopted child, parent or grandparent, as the case may be. In the case of an adopted child, the employee must produce a certified copy of the relevant court order and the birth certificate of the child. If an employee is absent for more than three consecutive working days, they must submit a medical certificate certifying that their child or adopted child, parent or grandparent, as the case may be, has healthcare-related issues; or any other relevant document which the employer may require.

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

On 31 December of each year, a worker shall be entitled to the payment of a year-end bonus equivalent to one twelfth of their earnings for that year from their 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 certain regulations, such as the Sugar Industry (Agricultural Workers) (Remuneration Order) Regulations, 1983 are excluded from the provision 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 employees must be obtained.

**Are workers 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 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 an employee suffers a personal injury that arises out of and in the course and scope of their employment, the employer is liable to pay compensation to the worker, subject to certain exceptions.

Where it can be proved that the injury to the employee resulted out of serious and wilful misconduct of the employee, 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 employee, the compensation shall be paid to their dependents.

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 when a doctor 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 their 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 their disablement or death, 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 their 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 they were not entitled or qualified to receive, the Director-General is authorised to recover the benefit.

**AN EMPLOYER SHALL, AT THE TIME OF NOTIFYING A WORKER OF THE TERMINATION OF HIS EMPLOYMENT, STATE THE REASON FOR THE TERMINATION.**

**Do employees who work remotely from a foreign jurisdiction and pay taxes in their country of residence, require a Mauritian work permit to render services to a Mauritian entity?**

According to the Worker's Rights Act, employees are permitted to work from home. However, the concept of remote

working does not form part of Mauritian legislation. Employees would be required to pay taxes in Mauritius, provided that their contract of employment is governed by Mauritian law. If the services are provided in Mauritius but the place of work

is another jurisdiction, then the employee would not be required to pay the taxes in Mauritius but in that jurisdiction.

## 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 employee's legal heirs. The gratuity must be calculated in terms of section 109(3) of the act.

## Remuneration entitlement

**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 employee who receives a higher remuneration and performs the same level of work as the former employee, the replacement employee shall be paid the remuneration corresponding to the initial salary in the salary scale, if any, of the other employee, alternatively, the salary drawn by the former employee, 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 employees 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 employees in monthly intervals, unless the parties agree to shorter intervals. Remuneration must be paid to employees 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 made by way of legal tender or cheque, employers are required to have every employee sign or affix their thumbprint in a remuneration book that 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 the 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.

Employers are required to pay part-time workers not less than the basic wage or salary which is prescribed in any legislation

or specified in a collective agreement, except in circumstances where the enactment overrides the agreement for the category or grade in which the employee is employed, whichever is higher. This amount must be calculated proportionately on the notional hourly rate and increased by not less than 5%. Where no enactment or collective agreement exists that prescribes a basic salary or wage, an employer is required to pay part-time employees an amount which is not less than the basic wage or salary of a comparable full-time employee. Again, this amount must be calculated proportionately on the notional hourly rate and increased by not less than 5%.

**Are employers 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 them 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 they 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 their chambers for a protective order on behalf of the employee or the group of employees. The protective order shall be for the 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 the amount to 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 Fund

**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 their employer's business 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 their employer is insolvent, provided the worker has registered a complaint with the supervising officer of the Ministry of Labour and Industrial Relations.

**THE REDUCTION OF AN EMPLOYER'S WORKFORCE MUST BE APPROVED BY THE REDUNDANCY BOARD.**

**What are the rules related to the overpayment of benefits?**
Where a person has received a benefit which they are not entitled or qualified to receive, or were 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.

## 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 employees by their employers. Employers who are data controllers or processors for the purposes of the Data Protection Act must 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 that 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 employees' personal information without their prior consent and may only do so 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. An employee's consent 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 employee accepts the offer, the employee's 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 no less favourable with the new employer, the employee 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, the employee 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.

# 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 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 they are prohibited by an enactment from doing so, terminate a work agreement on the expiry of a notice of termination being less than 12 consecutive months.

An employer shall, at the time of notifying a worker of the termination of their 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 employee would have earned had they 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 employee. Where the employer decides to hold a disciplinary hearing, they shall, at the request of the employee, provide them with such information or documents as may be relevant to the charge.

## Delivery of a letter of charges

The letter of charges and a notification of a termination of agreement shall be issued by delivering a notice to the employee in person or by sending the notification or notice by registered post to the usual or last known place of residence of the employee. 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 them at a specified post office, the notification or notice shall be deemed to have been duly served on the worker on the day they refuse to accept delivery thereof or are notified that it awaits them at the specified post office.

## 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 they became aware of the alleged misconduct, notified the worker of the charge against them;
- the worker has been afforded an opportunity to answer the charge;
- the worker has been given at least seven days' notice to answer;
- the employer cannot in good faith take any other course of action; and
- the termination is affected no later than seven days after the worker has answered the charge made against them, 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 am employee for reasons related to their capacity, provided the employer follows the process set out in the Workers' Rights Act and it can prove that the employee is unable to perform their contractual duties due to the incapacity.

### 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 seven days' notice to answer the charge; the employer cannot, in good faith, take any other course of action; and the termination is effected within seven 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 they have informed the employee of the reason for their suspension in writing. Any suspension without pay as disciplinary sanction following a disciplinary hearing shall not exceed four working days.

## Rules related to disciplinary proceedings

Where the opportunity afforded to a worker to answer any charge made against them is the subject of a disciplinary hearing, they may have the assistance of a representative of a trade union or a legal representative, or both; or an officer of the Ministry of Labour and Industrial Relations, where they are not assisted by a trade union or legal representative.

The employee 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 their employer shall not be admissible as evidence before a disciplinary hearing, or any authority or court.

An employer shall, within seven 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 an employee shall be completed within 30 days of the date of the first oral hearing 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 the Industrial 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 for payment of a severance allowance. The employee may also choose to approach the Employment Relations Tribunal for reinstatement.

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

The court may order an employer to 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 three

## THE WORKERS RIGHTS ACT

**DEFINES THE RETIREMENT AGE AS THE DATE ON WHICH A WORKER TURNS 65.**

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 that has a turnover of more than MUR 25 million or more than 15 employees 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 their employment, either temporarily or permanently, or close down their 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 the 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 a 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, on any alternative solution or on the payment of compensation by way of a settlement.

**Is it permissible to offer employees a voluntary separation package during a redundancy process? Does this undermine the legitimacy of the retrenchment/ redundancy process?**

The redundancy process under section 72 of the Workers' Rights Act will apply to a company with a turnover of more than MUR 25 million or more than 15 employees. The first step during the redundancy process is to start negotiations with the recognised trade union, the trade union having representational status or the workers' representatives, and may explore the possibility of payment of compensation by way of settlement. Before the employer may reduce its workforce, it must demonstrate that it has explored all options before going to the Redundancy Board.

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

A worker is entitled to severance pay.

**How is severance pay calculated?**

Severance pay is calculated, for every period of 12 months of continuous employment, to a sum equivalent to three months' remuneration (which shall be the remuneration drawn by the employee for the last complete month of their employment or an amount computed in the manner as is best calculated to give the rate per month at which the worker was remunerated over a period of 12 months before the termination of their agreement, including payment for extra work, productivity bonus, attendance bonus, commission in return for services and any other regular payment, whichever is higher).

**THE WORKMEN'S COMPENSATION ACT, CAP 220 (WORKMEN'S COMPENSATION ACT)**
**GOVERNS WORKPLACE INJURIES.**

## THE PAYMENT OF REMUNERATION TO FULL-TIME WORKERS IS GOVERNED BY SECTION 27 OF THE WORKERS' RIGHTS ACT

For any additional period of less than 12 months, a sum equal to one twelfth of the sum calculated multiplied by the number of months during which the worker was been in the continuous employment of the employer. The court may, where it thinks fit and, whether or not a claim to that effect has been made, order an employer to pay interest at a rate not exceeding 12% in a year on the amount of severance allowance payable from the date of the termination of the agreement to the date of payment.

**What dispute resolution mechanism are available to the worker when the worker is dismissed for operational requirements?**
The supervising officer of the Ministry of Labour and Industrial Relations 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 its employment either temporarily or permanently before the expiry of the 30-day period.

**Worker remedies?**
Workers may refer a dispute to the Redundancy Board. A reduction of a 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 pay the worker severance allowance at the rate of three months' remuneration per year of service or with the consent of the worker, order the employer to reinstate the employee in their former employment with payment of remuneration from the date of termination of their employment to the date of their reinstatement.

**Third party approval for termination/ termination documents?**
The reduction of an employer's workforce must be approved by the Redundancy Board.

## RETIREMENT

**What is the normal retirement age?**
The Workers' Rights Act defines the retirement age as the date on which a worker turns 65. A worker may, however, elect to voluntarily retire when they turn 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. The Portable Retirement Gratuity Fund will apply to employers who do not have a private pension scheme.

**Who is eligible to benefit from the Retirement Gratuity Fund?**
The following people shall be entitled to join and to benefit from the Portable Retirement Gratuity Fund: any worker or self-employed person, other than:

- a job contractor;
- a public officer or a local government officer; or
- a worker whose retirement benefits are payable:
  - under the Statutory Bodies Pension Funds Act; or
  - in accordance with a private pension scheme;

- a migrant worker or a non-citizen; and
- a worker drawing a monthly basic wage or salary of more than MUR 200,000.

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 employees must pay to the Director-General the contributions under the Workers' Rights Act, in respect of each worker in their 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 of Labour and Industrial Relations 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 Gratuity Retirement 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;
- retirement before the age of 60 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;
- retirement before the age of 60 in the event of permanent incapacity to perform their work, duly certified by a government official; or
- retirement due to the incapacity to perform their 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 upon the worker attaining the age of 60 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.

## 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 extend to the entire geographical area of Mauritius. The Supreme Court of Mauritius has held in the past that a restraint period of six 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 six months.

### Confidentiality and trade secrets

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

Employees 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, although this is usually specified in the contract of employment.

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# MOZAMBIQUE

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|---|---|
| Official language(s): | Portuguese |
| Population (approx.): | **32m** |
| Unemployment rate (2024): | **6.7%** |
| 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, 2018
- New Labour Law Act 13 of 2023 (New Labour Law)
- General Hiring of Expats Regulation, Decree No. 37/2016
- Regulation on the Hiring of Expats in the Petroleum and Mining Sector, Decree No. 63/2011
- Immigration Law Regulation, Decree No. 108/2014, as amended by Decree No. 46/2022 (Amendment of the Regulation on the Legal Regime of Foreign Citizens)
- Employment Law (relations of foreign non-resident employees), Decree No. 37/2016 and Decree No. 63/2011
- Regulation Establishing the Regime for Work Accidents Legal and Occupational Diseases, Decree No. 62/2013
- Law on Social Protection 4 of 2007 (Social Protection Law)
- Social Security Regulation, Decree No. 51/2017

### Regulatory rating

*Heavily regulated.*

**António Vicente Marques**
Partner

# AVM Advogados

AVM Advogados was founded in 2003. The firm originally began assisting clients as a full-service law firm operating through its various offices in Africa and Europe with an integrated team of more than 40 lawyers. AVM Advogados has grown from a Luanda-based law firm into a truly international practice.

AVM has offices in Luanda and Cabinda (Angola), Lisbon and Porto (Portugal) and Maputo (Mozambique). It is a full-service law firm with market leading strengths in labour law, energy, financial services, as well as EPCs and PPPs projects.

AVM advises clients on all aspects of international and national transactions and litigation. Our multidisciplinary team allows us to anticipate trends and respond in a streamlined manner to complex business and legal issues.

**Contact:** avm@avm-advogados.com

## TRENDS

### The most recent material trends in the Mozambique employment legal landscape are:

- **Introduction of teleworking:** Carried out outside the workplace, using technological and communication means.
- **Intermittent work:** Work provided on a discontinued or variable basis with alternating periods of activity and inactivity.
- **Introduction of personality rights:** The right to life, physical and moral integrity, honour, good name, privacy and image.
- **New terms for maternity and paternity leave:** Articles 12, 14 and 15 of the New Labour Law.
- **A new category of employer, *"micro employer"*:** A micro employer employs up to 10 employees.
- **Multi-employment:** When workers can sign subordinate employment contracts with multiple employers.
- **Workplace harassment:** A set of unacceptable behaviours, practices or threats that can cause physical, psychological, sexual or economic harm.
- **Introduction of the abuse of disciplinary power regime:** When the limits imposed by law, good faith, customs, social or economic purpose are exceeded.
- **Introduction to alternating working hours in the working day:** Includes a maximum of four weeks.
- **A new regime for vacation days:** Article 108 of the New Labour Law.
- **Introduction to the suspension of employment contracts:** For reasons of force majeure and unforeseeable circumstances, that is, due to the occurrence of phenomena such as cyclones, pandemics or floods, among other things.
- **A new regime for the exceptional hiring of experienced retirees:** This was established due to the need to transfer professional expertise to young employees.(Article 256, of the New Labour Law).

## 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 has ever been convicted of corruption, theft, extortion or fraud crimes. Employers may require an 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.

### Hiring options

**What hiring options are available to employers?**
There are mainly three hiring options available to employers in Mozambique:

- Permanent employment contracts
- Fixed-term employment contract
- Non-fixed-term employment contracts

There are also other options of hiring available to employers, 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.

The minimum age for admission to work is 18. The New Labour Law does, however, provide that an employer may enter into an employment relationship with a 15-year-old employee, provided that authorisation is obtained from their legal representatives.

**Is there a concept of dual employment or deemed employment in Mozambique? In what instances would this apply?**
An employee may undertake to work for several employers under a single employment contract, provided that the employers have a relationship with each other or share a common organisational structure.

Unless otherwise stipulated, employees may enter into subordinate employment contracts with multiple employers. Multi-employment occurs when the employee, through two or more employment contracts, undertakes to provide paid professional activity to two or more employers, depending on the number of contracts signed.

## Immigration

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

There are limitations on and stringent rules for employing foreign labour. There are primarily two ways in which foreigners may be hired for long term work:

- through a special quota system granted under an investment project approved by the Government; and
- under a work authorisation granted under the quota system and, out of the quota system, authorised by the Minister of Labour.

When employing foreign labour, employers must notify the Minister of Labour, the Mozambique Consulate in the country of origin of the applicant, and Migration Services, Employment and Social Security.

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 30 and 100 employees, 8% of the total number of employees;
- where the company has between 11 and 30 employees, 10% of the total number of employees; and
- micro employers with 10 or less employees, 15% of the total number of employees.

If an employer wishes to employ more candidates than allocated by the quota system, authorisation from the Ministry of Labour is required. Further, the employer must provide evidence that the prospective foreign employees possess the required academic and professional qualifications, and that there are no (or not enough) Mozambicans with those qualifications.

After the work authorisation is approved by the Minister of Labour the applicant must obtain a work visa at the Mozambican Embassy/Consulate in their country of origin, which must be extended with the local Migration Services.

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

There are limitations placed on the employer, including the quota system, mentioned above, and the minimum working age which is 18. However, in some exceptions minors under 15 years of age may be employed, 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, under the terms of Articles 6 and 7 of the Labour Law.

**EMPLOYEES ARE ENTITLED TO A BREAK OF BETWEEN 30 MINUTES AND UP TO A MAXIMUM OF TWO HOURS PER WORKING DAY.**

## CONDITIONS OF EMPLOYMENT

**Are there any formality requirements attached to employment contracts, e.g. written format and/or signed?**
Article 39 of the New Labour Law provides that employment agreements should be in writing (except fixed-term contracts that have as their object execution tasks lasting no more than 90 days) 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 wage payments and details of additional payments;
- hiring date;
- established agreement term and its justification (in case of a temporary employment agreement);
- date of the agreement and, in case of a fixed-term agreement, termination date; and
- signatures.

**Are zero-hour contracts permissible (contracts without a minimum set of working hours or any basic salary undertaking)?**
There are no provisions in the New Labour Law regarding employment contracts without a minimum set of working hours or any basis salary. The law provides that working hours result from the determination of the start and end times of the normal working period, including rest breaks, and cannot be longer than 48 hours a week and eight hours a day. The employment contract must contain the clauses related to the amount, form and timing of wage payments. It is mandatory for the company to have a working schedule approved by the Ministry of Labour.

### Probation

**Can a probation period be used, and if so, is there a maximum prescribed period of probation?**
Probation periods can be used per Articles 47 and 48 of the New Labour Law. The type of probation would depend on the type of employment contract.

- An employment contract for an indefinite period may be subject to a probationary period not exceeding two months for workers not covered by the following:
  - three months for mid-level technicians;
  - six months for higher-level technicians and workers who carry out leadership and decision-making duties.
- A fixed-term employment contract may be subject to a probationary period that does not exceed:
  - three months in fixed-term contracts lasting longer than one year;
  - one month in fixed-term contracts with a duration of more than six months but less than one year;
  - 15 days in for fixed-term contracts lasting up to six months; and
  - 15 days in contracts with an uncertain term when they are expected to last for 90 days or more.

### 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 New Labour Law. The act, however, does exclude public servants and local government employees from its scope of application.

**Is there a minimum wage requirement?**
Yes. There is a minimum wage requirement. A different national wage is set for various economic sectors.

**What is the standard/maximum working hours? Are there prescribed minimum resting periods during the normal working day/week?**
Article 93 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, which can be extended up to nine hour whenever the worker is granted an additional half-day of rest per week, in addition to the weekly rest day prescribed in Article 104 of the New Labour Law.

**PERIODIC SALARY INCREASES ARE GOVERNED BY INDIVIDUAL COMPANY POLICY AND OFTEN BASED ON COMPANY PERFORMANCE.**

**What are the minimum requirements relating to overtime?**
An employee may perform up to 96 hours of overtime per quarter, 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 107 and 108 of the New Labour Law provide that employees are entitled to paid holidays as follows:

- up to 12 days of leave during the first year of employment;
- then 30 days of leave for each full year of effective service for subsequent years.

**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 if they are not intentionally caused by the employee.

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 14 (1) of the New Labour Law provides that female employees are entitled to 90 consecutive days of maternity leave, which may initiate 20 days before the expected 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 there is a serious disciplinary offence.

Article 14 of the New Labour Law provides that male employees are entitled to seven days of paternity leave, starting on the day following the birth of the child and he cannot access paternity leave within a period of one year and six months after the previous leave was taken. Paternity leave is granted for 60 days in cases of death or incapacity of the mother, when proven by a competent health entity.

**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, Article 112 of the New Labour Law provides for absences of employees when relatives such as mothers, fathers, companions of their own children or other minors under their responsibility, are admitted to hospital. However, these absences do not result in the loss or impairment of the employee's rights relating to remuneration, seniority and vacation. Employees are entitled to sick pay during family leave absences under the social security system.

Further, Article 112 of the New Labour Law gives other examples of when family responsibility leave can be taken, such as, five days for marriage, five days for the death of an employee's spouse, father, mother, child, stepchild, sibling, grandparent, 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 is usually based on the economic situation of the company and employee performance.

**What statutory payments is an employer required to make to the government in relation to employees, including deductions from employees' salaries and employer contributions, such as unemployment insurance to cover periods of unemployment?**

In Mozambique, employers are required to contribute to the social security system, as established by the Social Protection Law. These contributions are mandatory and aim to provide employee protection in cases of illness, maternity/paternity leave, disability, retirement and death. However, the current social security system does not include unemployment insurance covering periods of involuntary unemployment.

Under the Mandatory Social Security Regulation (Decree No. 56/2024), contributions are based on the monthly remuneration declared by employers through the INSS's digital platform, in accordance with Articles 14 and 15 of the Regulation. The total contribution rate is 7%, split between a 3% deduction from the employee's salary and a 4% employer contribution, pursuant to Article 2 of Decree No. 04/90. In addition, employers must withhold and remit personal income tax (IRPS) in accordance with Law No. 33/2007 and Law No. 20/2013.

## 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, productivity, work performance and the economy.

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

Yes. Article 77 of the New Labour Law provides that employment terms can be changed by unilateral decision by the employer 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?**

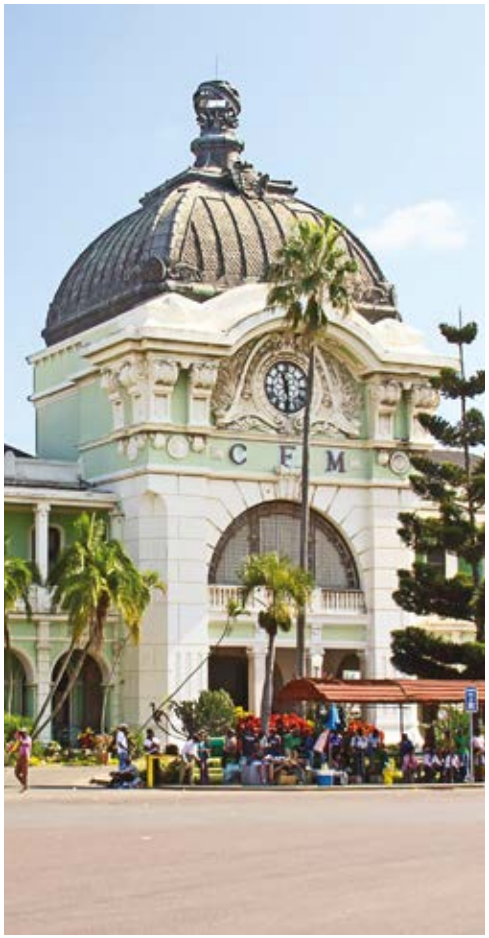
Yes. Employees are commonly represented in their interactions with employers, either by trade unions or work councils.

**What are the legal requirements concerning trade unions and worker organisations, including registration obligations, organisational rights, and entitlements to represent employees in the workplace?**

The right to form and join trade unions is enshrined in Article 86 of the Constitution and is reinforced by the New Labour Law. Employees have the right to freedom of association to defend their professional interests. Trade unions are entitled to:

- Promote and defend workers' rights.
- Offer economic, legal and social support.
- Hold trade union meetings at the workplace, generally outside normal working hours.

To be legally recognised, trade unions must register with the competent authority. This involves submission and approval of their articles of association, followed by publication in the Government Gazette, pursuant to Article 154 of the New Labour Law. Union structures may include trade union delegates, company committees, trade unions and confederations.



**EMPLOYERS HAVE AN OBLIGATION TO RESPECT THE PERSONAL RIGHTS OF EMPLOYEES.**

## SOCIAL BENEFITS, TAX AND PENSIONS

### Workplace injuries

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

Yes. According to Article 53 of Decree No. 62/2013, Regulation Establishing the Regime for Work Accidents Legal and Occupational Diseases, employees have the right to receive compensation for accidents at work or occupational illness. In the case 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 they have 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 whether an employee is incapacitated to a point of being unable to work. If it is impossible to reinstate them, the employer may terminate the contract and the employee must be remunerated in accordance with the law in case of termination with just cause by the worker under the terms established in Decree No. 62/2013.

### 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 work-place related injury or disease?**

Yes. Employees have the right to benefit from medical and medicinal aid, according to Article 38 and 43 of Decree No. 62/2013.

### 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:

- 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 rates set out in the withholding rate tables issued by the Government.

**Do employees who work remotely from a foreign jurisdiction and pay taxes in their country of residence, require a Mozambique work permit to render services to a Mozambican entity?**

Foreign employees who intend to work in Mozambique must apply for a work permit from the Ministry of Labour and a work visa at the Mozambican Consulate for their legalisation in the country, for the temporary exercise of professional activity.

Legislation does not cater for situations where foreign employees work remotely from a foreign jurisdiction.

### Other social benefits

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

Employers also deduct social security contributions from employees' salaries, which amount to a 3% contribution by the employee and 4% 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.

## Skills Development

Mozambique's New Labour Law mandates that both the state and employers must provide and facilitate training opportunities for employees. Employers are encouraged to implement annual professional training plans.

Beyond the New Labour Law, Law No. 26/2022 (Vocational Education Law) establishes a coherent and market-driven vocational education system, aimed at preparing students and trainees with relevant skills.

Employment services and skills development are regulated by several instruments, including:

- Resolution No. 1/2021: Establishes the role of the National Employment Institute (INEP) in promoting training programmes and supporting workforce integration, particularly of vulnerable groups.
- Decree No. 45/2023: Requires all employers to notify the INEP of job vacancies and pre-professional internships at least seven days before they are announced publicly.
- Decree No. 87/2023: Regulates the licensing and operation of private employment agencies, which must comply with labour standards, ensuring employee protection.
- Decree No. 88/2024: Governs the hiring of foreign employees, incorporating quotas and training obligations for nationals.
- Decree No. 95/2021: Approves the regulation of pre-professional internships and sets rules applicable to host entities and interns.
- Ministerial Diploma No. 04/2006: Regulates vocational schools under the framework of Ministerial Diploma No. 138/2003.

## Affirmative Action

**What affirmative action obligations do employers have under the law, and what measures must they implement to ensure compliance?**

While Mozambique does not impose specific affirmative action quotas, the New Labour Law promotes equal opportunity and prohibits discrimination in employment, ensuring fair recruitment, selection, promotion and remuneration processes. Employers are encouraged to implement inclusion and diversity policies and provide training and skills development programmes.

Additionally, employers must:

- Respect employees' personal rights (to privacy, dignity, data protection, etc.).
- Comply with occupational health and safety regulations.
- Refrain from imposing forced purchases or service use.
- Promote physical and psychological well-being, including cultural and sports initiatives (mandatory for medium and large employers).

## 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 Article 7 of the New Labour Law. The employer's power to collect and process personal data is restricted by the employee's fundamental right to privacy. In terms of Articles 7 and 8 of the New Labour Law, when appointing an employee or during the course of an employment contract, employers may not 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.

When an employer obtains an employee's personal data, the employer is subject to a duty of confidentiality. Further, any other information, which if disseminated breaches the employee's privacy, shall not be supplied to third parties without the consent of the 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 must be 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 an employee has reached retirement age, the employer lacks confidence in a newly acquired employee, an employee intends staying on as an employee of the old employer, or the buyer seeks to change the business' functions.

However, there are other types of transfers, such as the temporary transfer of an employee, that cannot exceed six months or the total transfer of the company, where the employee can move to a new employer and can determine the termination of the current employment contract.

Further, an employee cannot be dismissed as a result of the business transfer, but can be dismissed in connection with it. This means that following a business transfer, employees can only be dismissed 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. Consultation and information disclosure are 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 are no trade union bodies) about the date and reasons for the business sale, as well as its predictable consequences.

**Joint and several liability for employers?**
According to Article 83 (4) of the New Labour Law, 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 83 (3) provides that the new employer is required to provide the same terms and conditions of employment to the relevant employees as established in their 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 28 of the New 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 successfully 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
- Unilateral decision/initiative of the employee regardless of just cause
- Mutual agreement
- By unilateral decision of any of the parties with just cause

Therefore, termination cannot be done at will by an employer 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 Article 67 of the New Labour Law, which describes the kinds of misconduct an employee may have committed to warrant dismissal. An employer shall be entitled to dismiss an 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 actions, 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 effected, the employee must be invited to a disciplinary hearing before a final decision to dismiss is made. The period of prescription for a 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, including the accusation phase, the defence phase and the decision stage. Each of these phases aims to establish fair procedure.

Further, an employee's right to substantive fairness is legitimated during the defence stage. 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. An employer may fairly dismiss 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.

**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 a 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, Article 138 of the New Labour Law 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.

**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

Mozambican employment law provides for two main types of redundancy procedure: individual redundancy and collective dismissal.

The first kind of redundancy occurs whenever an 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 and 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 144 of the New Labour Law 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 more than 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' notice plus compensation calculated as described above.

**What are the dispute resolution mechanisms?**
Dispute resolution in employment matters is governed by several different statutes. The collective conflict resolution regime, set forth in Mozambique's employment law, with the necessary adaptation, applies to disputes arising from individual employment relationships. Therefore, although conciliation is optional, mediation is mandatory before submitting a claim to arbitration or to the labour courts, except for interlocutory injunctions.

Arbitration is always optional, unless the employer is a state company, or a company that provides essential services and the Commission for Mediation and Arbitration so determines.

If and when a claim is filed with the court, the employee and the employer are given notice to attend 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:

- remuneration for the period during which the proceeding was pending (up to a limit of six months); and/or
- reinstatement or, alternatively, compensation corresponding to 45 days' wages for each year of service (this applies to employees under permanent contract, while the amount for fixed-term contract employees is calculated from the date of termination to 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.

**Is it permissible to offer employees a voluntary separation package during a redundancy process? Does this undermine the legitimacy of the retrenchment/ redundancy process?**
It is possible to reach a mutual agreement with an employee under Article 137 of the New Labour Law. Negotiations for a mutual agreement normally begin before the retrenchment/redundancy process.

## Notice requirements

When an employer foresees a collective dismissal, it must notify the trade union bodies and the affected employees and inform the ministry that oversees labour before the negotiation process begins.

The notice to the employees must be accompanied by a description of the reasons for the collective dismissal and the number of employees who will be affected by the process.

The consultation process between the employer and the trade union body must not last longer than 30 days, and it should address the grounds for the collective dismissal, the possibility of avoiding or reducing its effects, and the measures necessary in order to mitigate its consequences for the affected employees.

## Termination benefits

**Are any termination benefits payable in the event of a dismissal for operational requirements?**
Yes. Compensation is payable for dismissal based on operational requirements. The amount of compensation depends on whether the employee was on a permanent or fixed-term contract.

For fixed-term contract employees, the compensation payable corresponds to their expected remuneration between the date of the dismissal and the date on which the contract was due to terminate.

For permanent employees, compensation is calculated as follows:

- 30 days of wages for each year of service, if the employee's base wage, including the length of service bonus, is equivalent to one to seven times the national minimum wage.
- 15 days of wages for each year of service, if the employee's base wage, including the length of service bonus, is equivalent to more than seven to 18 times the national minimum wage.
- Five days of wages for each year of service, including the length of service bonus, if the employee's base wage is equivalent to the amount of more than 18 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 of what would be ordinarily due to the employee (i.e. 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. 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?**
The is no provision in law regarding 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 year of service, including the length of service bonus, if the employee's base wage is equivalent to one to seven times the national minimum wage.
- 15 days of wages per year of service, including the length of service bonus, if the employee's base wage is equivalent to more than seven to 18 times the national minimum wage.
- Five days of wages per year of service, including the length of service bonus, if the employee's base wage is equivalent to the amount of more than 18 times the national minimum wage.

For fixed-term contract employees, the severance pay due to an employee corresponds to the remuneration the employee would have received between the termination and the date on which the contract would have expired.

**THE RETIREMENT AGE IS**
**60 YEARS FOR MEN AND 55 FOR WOMEN.**

## RETIREMENT

**What is the normal retirement age?**
The retirement age is 60 for men and 55 for women. Retirement does not occur automatically when an employee reaches retirement age. 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 fund and the number of contributions made. The New Labour Law establishes a regime for hiring experienced retirees on an exceptional basis, due to the need to transmit professional experience to young workers.

However, the hiring of retired people can only occur for a maximum period of five years, renewable once, except in cases where they are also a shareholder or partner of the company.

In respect of whether termination of employment at retirement constitutes dismissal, termination of employment at the point of retirement does not constitute 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. Non-compete agreements are not expressly prohibited but are seen as being contrary to the Constitution's protection of the right to work and choose one's job freely. Restrictive agreements 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 where an employee has breached confidentiality or trade secret agreements. However, agreements must be reasonable or risk being unenforceable.

# NAMIBIA

| | |
|---|---|
| Official language(s): | English |
| Population (approx.): | **3m** |
| Unemployment rate (2024): | **19.2%** |
| Name of court for labour matters: | Labour Court (A Division of the High 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

- Labour Act 11 of 2007 (Labour Act)
- Employees' Compensation Act 30 of 1941
- Social Security Act 34 of 1994
- Affirmative Action (Employment) Act 29 of 1998
- Income Tax Act 24 of 1981 (Income Tax Act)
- Constitution of the Republic of Namibia, 1990

### Regulatory rating

*Heavily regulated.*

**Frieda Kishi**
Partner

## Cliffe Dekker Hofmeyr

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## 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 testing for HIV.

### 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.

Note that for fixed-term contracts, section 128C of the Labour Act creates a presumption of indefinite employment and provides that an employee is presumed to be employed indefinitely, unless the employer can establish a justification for employment on a fixed term.

**Is there a concept of dual employment or deemed employment in Namibia? In what instances would this apply?**
With regards to dual employment in Namibia (i.e. working for more than one employer at the same time), there are no provisions in terms of the law which expressly prohibit dual employment. Generally, an individual may work for more than one employer, on condition that they are not precluded from doing so by a contract of employment that they are party to. Individuals must therefore ensure that their employment contracts and/or workplace policies do not contain clauses restricting arrangements of dual employment.

In addition to the aforesaid, it should also be noted that trust and the duty to act in good faith are cornerstone principles of any employment relationship. In light of this, individuals engaged in dual employment must ensure that they do not engage in conduct which would breach their duty to act in good faith in respect of any of their employers.

Concerning "*deemed employment*" (i.e. a situation where an individual is considered an employee, even if they have not been formally employed in terms of a contract of employment), section 128A of the Labour Act creates a presumption as to whether a person is an employee. In terms of this provision, until the contrary is proved, an individual who works for or renders services to any other person, is presumed to be an employee of that other person,

regardless of the form of the contract or the designation of the individual, if any or more of the following factors are present:

- the manner in which the individual works is subject to the control or direction of that other person;
- the individual's hours of work are subject to the control or direction of that other person;
- in the case of an individual who works for an organisation, the individual's work forms an integral part of the organisation;
- the individual has worked for that other person for an average of at least 20 hours per month over the past three months;
- the individual is economically dependent on that person for whom they work or render services;
- the individual is provided with tools of trade or work equipment by that other person;
- the individual only works for or renders services to that other person; or
- any other prescribed factor.

The above amendment to the Labour Act serves to protect employees from attempts to circumvent labour protections by misclassifying employment relationships.

## 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. Discrimination is also prohibited. It is, however, not considered discriminatory to take any affirmative action measures into account and to ensure equal opportunities for racially disadvantaged persons, women and persons with disabilities. It is also not considered discrimination if the employer takes into account the ability, capacity, productivity and conduct of a person, and the inherent requirements of the job and the needs of the particular industry.

## CONDITIONS OF EMPLOYMENT

**Are there any formality requirements attached to employment contracts, e.g. written format and/or signed?**
There is no legal requirement that employment contracts must be in writing. It is, however, advisable to conclude written employment contracts to ensure that the rights and obligations of both the employer and employees are clearly defined.

However, section 130 of the Labour Act provides that employers are required to keep certain employment records for a period of five years. These records include:

- the name, sex, age and occupation of each employee;
- 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;
- the remuneration paid to 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.

**Are zero-hour contracts permissible (contracts without a minimum set of working hours or any basic salary undertaking)?**
Zero-hour contracts are not expressly prohibited by law in Namibia. Given the lack of express regulation in the Labour Act, it is advisable that the terms of a zero-hour contract be carefully drafted in an employment agreement. Furthermore, employers seeking to employ individuals on this type of basis must ensure that they remain compliant with the relevant provisions of the Labour Act, such as those pertaining to maximum working hours, overtime, meal intervals and leave.

### Probation

**Can a probation period be used, and if so, is there a maximum prescribed period of probation?**
Under Namibian employment law, there are no provisions explicitly dealing with periods of probation.

In light of the absence of a regulated mandated length for probationary periods, an employer has the discretion to decide whether to include a probationary period in an employment contract, as well as the duration of such probationary period, based on such an employer's specific needs and operational requirements.

Standard practices indicate that the average probationary periods range from three months to one year from an employee's date of appointment.

### Minimum employment rights

**Are any employees excluded from minimum employment rights?**
Section 2(2) of the Labour Act 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?**
Section 13 of the Labour Act empowers the Minister of Justice and Labour Relations to issue wage orders.

With effect from 1 January 2025, the minimum wage for employees is NAD 18 per hour.

Despite the above wage setting of NAD 18 per hour, certain classes of employees are entitled to the following wages:

- In terms of the notice in Government Gazette No. 218 of 7 August 2024, domestic workers are entitled to:
  - NAD 12 per hour with effect from 1 January 2025;
  - NAD 15 per hour from 1 January 2026; and
  - NAD 18 per hour from 1 January 2027.
- In terms of the notice in Government Gazette No. 218 of 7 August 2024, agricultural workers are entitled to:
  - NAD 10 per hour with effect from 1 January 2025;
  - NAD 14 per hour from 1 January 2026; and
  - NAD 18 per hour from 1 January 2027.
- In terms of the notice in Government Gazette No. 8562 of 15 January 2025, security workers are entitled to:
  - NAD 13 per hour with effect from 1 January 2025;
  - NAD 16 per hour from 1 January 2026; and
  - NAD 18 per hour from 1 January 2027.
- In terms of Government Gazette No. 8377 of 6 June 2024, by means of an extension of collective agreement on minimum wages and conditions of employment for employees in the construction industry, varied minimum wages exist for different categories of employees within the construction industry, with general labourers entitled to a rate of NAD 18.72 per hour.

**A SICK LEAVE CYCLE IS A PERIOD OF 36 CONSECUTIVE MONTHS.**

**What are the standard/maximum working hours? Are there prescribed minimum resting periods during the normal working day/week?**
In terms of section 16 of the Labour Act, employees may not work more than 45 ordinary hours in any week, and in any case, not more than nine ordinary hours on any day, if the employee works for five days or less in a week, or eight hours on any day, if the employee works for more than five days in a week.

In terms of section 18 of the Labour Act, if an employee works continuously for more than five hours in a day, the employee is entitled to a meal interval of at least one hour. The meal interval can be shortened to a minimum of 30 minutes by agreement, and if the employer has given written notice to the Permanent Secretary of that agreement.

Section 20 of the Labour Act further prescribes that an employer may not require or permit an employee, other than one who is performing urgent work, to work a shift of longer than 12 hours. Furthermore, an employer may not require or permit an employee, other than one who is performing urgent work, to work without a weekly interval of a minimum of 35 consecutive hours of rest.

### What are the minimum requirements relating to overtime?

Section 17(1) of the Labour Act provides that overtime may only be worked by agreement between the employer and employee. Furthermore, in terms of such agreement, an employee may not be required or permitted to work more than 10 hours overtime a week, and in any case not more than three hours of overtime on a given day.

Section 17(2) of the Labour Act prescribes that an employee must be paid at a rate of at least 1.5 times their hourly basic wage for every hour of overtime worked. In the event that an employee who normally works on a Sunday or public holiday works overtime on such Sunday or public holiday, the employee must be paid at a rate of at least double their hourly basic wage.

Section 19 of the Labour Act, which deals with night work, prescribes that an employee is entitled to an additional payment of 6% of that employee's hourly basic wage, excluding overtime, for each hour of work done by that employee between the hours of 20h00 and 07h00.

**EMPLOYERS CAN AGREE TO PAY EMPLOYEES BONUSES, BUT IT IS NOT AN AUTOMATIC ENTITLEMENT.**

In terms of section 21, employers must not require or permit an employee to work on a Sunday, with the exception of employees engaged in the following work:

- urgent work;
- carrying on the business of a shop, hotel, boarding house or hostel that lawfully operates on a Sunday;
- performing domestic service in a private household;
- health and social welfare care and residential facilities, including hospitals, hospices, orphanages and old age homes;
- work on a farm required to be done on that day;
- work in which continuous shifts are worked; or
- any activity approved by the Permanent Secretary.

Furthermore, an employer must pay an employee who works on Sunday double that employee's basic hourly wage for each hour worked. As an alternative, the employer must pay an employee who works on Sunday 1.5 times that employee's hourly basic wage for each hour worked, provided that the employee agrees thereto and that the employee is granted an equal period of time away from work during the subsequent working week.

In the case of an employee who ordinarily works on a Sunday, the employee must receive their daily remuneration, plus the hourly basic wage for each hour worked.

When it comes to public holidays, section 22 of the Labour Act prescribes that employees, as a general rule, may not be required to work on public holidays, with the exception of employees engaged in the following work:

- urgent work;
- carrying on the business of a shop, hotel, boarding house or hostel that lawfully operates on a public holiday;
- performing domestic service in a private household;
- health and social welfare care and residential facilities, including hospitals, hospices, orphanages and old age homes;
- work on a farm required to be done on that day;
- work in which continuous shifts are worked; or
- any activity approved by the Permanent Secretary.

If a public holiday falls on a day on which an employee would ordinarily work, the employer is required to either pay the employee who does not work on the public holiday at least their daily remuneration, or, if the employee works on the public holiday, that employee's normal daily remuneration plus their basic hourly wage for each hour worked. As an alternative, and provided that it is by agreement, the employer may also pay an employee who works on the public holiday that employee's normal daily remuneration plus one half of that employee's hourly basic wage for each hour worked, and further grant such employee an equal period of time off from work during the subsequent working week.

If an employee works on a public holiday that falls on a day which is not the employee's ordinary work day, the employer is required to pay such employee double 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;
- if the number of days in an ordinary work week are two, the annual leave is eight working days; and
- if the number of days in an ordinary work week is one, the annual leave is four working days.

An employee who does not ordinarily work a fixed number of days per week is entitled to annual leave calculated on the basis of the average number of days worked per week over the 12 months prior to the commencement of a new annual leave cycle, multiplied by four.

It should be noted that unused annual leave does not lapse at the end of an annual leave cycle, but is carried over to the next annual

leave cycle, in the absence of a provision in an employment contract or workplace policy that dictates otherwise.

Lastly, any unused annual leave that has accrued to an employee at the date of termination of employment, for whatever reason, must be paid out to the employee at the date of termination.

**What are the minimum requirements relating to sick leave?**

In terms of section 24 of the Labour Act, employees are afforded six working weeks of paid sick leave per sick leave cycle (a cycle is three years).

Therefore, employees who work five days per week are afforded 30 sick leave days per sick leave cycle. Similarly, employees who work six days per week are afforded 36 sick leave days per sick leave cycle. A pro-rated amount of sick leave days will be afforded to employees who work less than five days per week.

Furthermore, the sick leave days to which an employee who does not ordinarily work a fixed number of days per week must be calculated annually on the basis of the average number of days worked per week over the previous 12 months.

It should be noted that during the first year of employment, an employee is entitled to one day's sick leave for every 26 days worked.

During the employee's first year of employment they are entitled to one day's sick leave for every 26 days worked.

A sick leave cycle is a period of 36 consecutive months.

Unlike annual leave, unused sick leave does not carry over to the next sick leave cycle, and is not paid out to the employee upon termination of employment.

**What are the minimum requirements relating to parental leave, and does it apply to both parents or only mothers?**
Section 26 of the Labour Act provides that a female employee who has completed six months of continuous service for the employer is entitled to at least four weeks of 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 this period.

The employer is not required to pay the employee her basic wage during the period of maternity leave, but must pay to her any other remuneration normally payable, such as allowances. Female employees are to claim their basic salary, subject to limitations, from the Social Security Commission in terms of the Social Security Act 34 of 1994.

There is no provision in the law for paternity leave for male employees in the Labour Act. However, employers are free to include provisions to this effect in their employment contracts or workplace policies, should they wish to do so.

**What are the minimum requirements relating to family responsibility leave?**
Section 25 of the Labour Act makes reference to *"compassionate leave"*.

In terms of this section, employees are entitled to five paid working days of compassionate leave per compassionate leave cycle (a cycle consists of 12 months).

Compassionate leave may be used in the event of death or serious illness of an employee's child, spouse, parent, grandparent, sibling, father-in-law or mother-in-law.

Unlike annual leave, unused compassionate leave does not carry over to the next compassionate leave cycle, but rather lapses, and is not paid out to an employee upon termination of employment.

**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?**
In terms of section 50(e) of the Labour Act, the unilateral variation or alteration of any term or condition of employment by an employer or an employers' organisation is an unfair labour practice, and therefore prohibited.

Any and all alterations made to the terms and conditions of employment must be done by agreement with the employee concerned.

**Are employees commonly represented in their interactions with employers relating to changes to employment terms?**
It is common for recognised trade union officials or shop stewards (internal union workplace representatives) to represent employees in such instances. However, where a contractual term of an employment agreement is sought to be varied, the agreement to such variation must be by the employee personally.

## SOCIAL BENEFITS, TAX AND PENSIONS

### Workplace injuries

**In the event of workplace injury/disease, will employees be entitled to some form of compensation?**
Employees who are covered in terms of the Employees' Compensation Act may be entitled to claim compensation subject to certain conditions. For example, in terms of section 27(1) of the act, no periodic payments shall be made in respect of the first three days of disablement which lasts for less than two weeks. Furthermore, if the accident is attributable to the serious and wilful misconduct of the employee, no compensation shall be payable under this act. However, if the accident results in serious disablement, or the employee dies as a result, leaving a dependant who is wholly dependent upon them, the employer may be directed to pay some costs.

### 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. In terms of the maximum personal income tax payable, the tax rates for the fiscal year 1 March 2024 through 28 February 2025 provided that employees who earned a taxable income of over NAD 1,55 million had to pay NAD 429,000 plus 37% tax on the excess. Given the variable nature of the tax rates, it is advisable to consult with an expert to ensure compliance with tax laws.

Employers have the obligation to:

- deduct tax from the salaries of employees in accordance with tax rates and pay over such amounts to the Namibian Revenue Agency;
- issue employees with a tax certificate (PAYE 5 Certificate) indicating the total remuneration and the amount of employees' tax deducted;
- submit a return within the prescribed timeline, showing details of all employees, total remuneration paid and tax deducted.

**ON TERMINATION**
**THE EMPLOYER MUST PAY THE EMPLOYEE FOR WORK DONE PRIOR TO TERMINATION.**

**THE RETIREMENT AGE IS**
**65 YEARS.**

**Do employees who work remotely from a foreign jurisdiction and pay taxes in their country of residence, require a Namibian work permit to render services to a Namibian entity?**
In terms of section 27 of the Immigration Control Act 7 of 1993, an employment permits are required for people who wish to enter Namibia or for those already in Namibia for the purpose of entering into or continuing employment. Therefore, if an individual works remotely from their country of residence for a Namibian entity, but does not physically enter Namibia for the purposes of rendering their services, then an employment permit for that person is not required.

### Other social benefits

**What other employee social benefits must the employer either contribute to or deduct from employee contributions?**
In terms of section 21(2) of the Social Security Act 34 of 1994, every employer and employee is liable in respect of the prescribed monthly contributions payable to the Social Security Commission for the:

- Maternity Leave, Sick Leave and Death Benefit Fund;
- National Medical Benefit Fund, except if the employee is a member of any other medical fund or scheme; and
- National Pension Fund, except if the employee is a member of any other pension fund or scheme.

## DATA PRIVACY

**What data privacy obligations (if any) rest on employers in respect of their employees?**
Currently, Namibia does not have comprehensive data privacy legislation that provides for the data privacy obligations of employers in respect of their employees. The Draft Data Protection Bill, 2021 seeks to outline the obligations of data processors and controllers in Namibia, and the access to personal data, but the bill is still under review and has not yet been passed as a statute. Employers must, however, remain cognizant of an employee's right to privacy (which is a constitutionally safeguarded right), and are therefore advised to adopt policies aimed at protecting the personal information of their employees.

## 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, section 34 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 below. 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 employer 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?**

The statutory obligations and procedures for terminating a contract of employment depend largely on the reasons or grounds for termination of the contract of employment.

In terms of section 32 of the Labour Act, a contract of employment terminates automatically one month after:

- the death or sequestration of the employer, if the employer is a natural person;
- the date on which the employer is wound up, if the employer is a juristic person;
- the date of which the partnership is dissolved, if the employer is a partnership.

These timeframes may be extended if so provided for in a contract of employment or a collective agreement, or at the end of a longer period during which the employer continues to carry on business.

In terms of section 33 of the Labour Act, an employer may not, whether notice is given or not, dismiss an employee:

- without a valid and fair reason; and
- without following the procedures as set out in section 34 (in cases of retrenchment) or a fair procedure in any other case.

Where unfair dismissal is alleged, the onus rests on the employer to prove a substantively and procedurally fair dismissal of the employee.

**What notice periods are applicable?**

Under section 30 of the Labour Act, the following notice periods apply to the termination of employment on notice:

- one day, if the employee has been employed for four weeks or less;
- one week, if the employee has been employed for more than four weeks but less than one year;
- one month, if the employee has been employed for more than one year.

Longer notice periods may be agreed. Payment instead of notice is also permitted.

Note that in the event of a retrenchment, a notice period of at least four weeks is required before the anticipated date of dismissal.

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

In the event of a dismissal due to misconduct, incapacity due to poor work performance, or resignation (before the age of 65), the following is payable to an employee:

- payment for work done prior to termination;
- overtime (if any); and
- leave pay in respect of accrued annual leave not yet used.

In the event of a dismissal due to medical incapacity, retrenchment, death or resignation (after the age of 65) or retirement, the following is payable to an employee:

- payment for work done prior to termination;
- overtime (if any);
- leave pay in respect of accrued annual leave not yet used; and
- severance pay.

In terms of section 36 of the Labour Act, if an employee is dismissed during the first 12 months of employment, and at any place other than the place where the employee was recruited, the employer must either:

- transport the employee to the place where the employee was recruited; or
- pay the employee an amount equal to the costs of that transport.

Note that this does not apply if an employee unreasonably refuses to be reinstated.

**What are the dispute resolution mechanisms?**
In terms of the Labour Act, disputes are referred to the Office of the Labour Commissioner for conciliation, which if unsuccessful, is followed by arbitration.

A party aggrieved by the outcome of such arbitration proceedings may then appeal to the Labour Court (a division of the High Court). The decision of the Labour Court may also be appealed to the Supreme Court, whose decision shall be final.

Parties are also able to conclude a collective agreement that provides for a referral of disputes to private arbitration, in terms of section 86(1) of the Labour Act.

**Can an employee be dismissed for operational requirements?**
Yes. As provided for in Section 34 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 the employee(s)) 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 liable to a fine not exceeding NAD 10,000, or to imprisonment for a period not exceeding two years, or to both the fine and imprisonment.

**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 leave the employee may be entitled to, for outstanding annual leave, notice pay, transport costs (if applicable) 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.

**How is severance pay calculated?**
Severance pay is calculated by multiplying an employee's weekly rate by the amount of completed and continuous years of service that such employee has worked. An example is illustrated below:

If an employee earns NAD 50,000 per month and has been working for a period of 12 continuous and complete years by the date that their employment is ended, the employee's severance pay is calculated as follows:

**Step 1:**
NAD 50,000 / 4.333 = NAD 11,539.35 (weekly rate)

**Step 2:**
NAD11,539.35 x 12 years = NAD 138,472.20

Note that years of service that are not fully complete (i.e. 12 months) are not counted for the purposes of severance pay.

**What remedies are available to employees?**
In terms of section 86(15) and (16), an arbitrator may make any appropriate arbitration award including:

- an interdict;
- an order directing the performance of any act that will remedy a wrong;
- a declaratory order;
- an order for reinstatement of an employee;
- an award for compensation; and
- an order for costs (only in such event where a party in the arbitration proceedings acted in a frivolous or vexatious matter by proceeding with or defending the dispute, or during the proceedings).

**Is it permissible to offer employees a voluntary separation package during a redundancy process? Does this undermine the legitimacy of the retrenchment/ redundancy process?**
Voluntary separation packages are not prohibited in terms of the Labour Act. Therefore, it is permissible to offer employees a voluntary separation package. The provision of such voluntary separation packages, must, however not

**EMPLOYMENT CONTRACTS ARE NOT REQUIRED TO BE IN WRITING.**

be in contravention of any provisions or guarantees provided for in the Labour Act. Furthermore, the provision of a voluntary separation package must not be done in an attempt to avoid compliance with the provisions of section 34 of the Labour Act, (which deals with dismissals arising from collective termination or redundancy). The provision of voluntary separation packages, like any other retrenchment process, must therefore be done without malintent, and lawfulness, fairness and transparency must always underpin a retrenchment/redundancy process.

## RETIREMENT

**What is the normal retirement age?**
Although there is no explicitly defined retirement age in Namibia, section 35(1)(c) of the Labour Act provides that a person is entitled to severance pay upon resignation or retiring on reaching the age of 65. Therefore, 65 is widely accepted as being the age of retirement in Namibia.

Employers are, however, able to set a younger retirement age (such as 60) in their employment contracts and/or workplace policies.

**Are any termination benefits payable in the event of retirement?**
In terms of sections 35 and 37 of the Labour Act, the following amounts must be paid to an employee upon retirement:

- severance pay equal to at least one week's remuneration for every 12 months of continuous service;
- leave pay in respect of annual accrued leave not yet taken;
- transport allowance (if applicable);
- overtime (if applicable);
- notice pay (if an employee is being paid notice instead of working same); and
- payment for work done before termination.

## POST-TERMINATION RESTRAINTS

### Enforceability of non-compete provisions

**Can contractual non-compete provisions be enforced?**
Under Namibian common law, restraint of trade clauses in employment contracts are presumed valid and enforceable, provided they are reasonable and not contrary to public policy. Courts recognise that employers may have legitimate interests to protect – such as confidential information, trade secrets, and customer connections – and may impose reasonable limitations on former employees to safeguard those interests after employment ends.

However, the law requires that the restraint must be proportionate: it should not go further than necessary in terms of duration, scope or geographic reach. A clause aimed merely at preventing competition, without protecting a real proprietary interest, is likely to be unenforceable.

Importantly, the burden of proof lies with the employee to show that a restraint is unreasonable or violates their constitutional right to practice a trade or profession.

### 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 duty to act in the interest of the employer, and this duty would encompass protecting confidential information.

# NIGERIA

| | |
|---|---|
| Official language(s): | English |
| Population (approx.): | **216 million** |
| Unemployment rate (2024): | **3%** |
| Name of court for labour matters: | National Industrial Court of Nigeria (NICN) |
| Are pre-employment checks permissible? | Yes, however, the employer must conduct such checks in a manner that does not breach the person's constitutional right to privacy, and certain checks cannot be conducted without the person's prior consent (such as an HIV/AIDS test) |
| 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

- LaLabour Act, 2004 (Labour Act)
- National Minimum Wage Act, 2019
- Constitution of the Federal Republic of Nigeria, 1999 as amended
- International conventions

### Regulatory rating

*Heavily regulated.*

**Kunle Obebe**
Partner

# Bloomfield Law Practice Firm Profile

Bloomfield Law Practice was established in Lagos, Nigeria as a specialist commercial and dispute resolution law firm to offer comprehensive and exceptional legal solutions for those who expect more. We are practical, commercial and goal-driven in our approach and have earned ourselves a reputation for achieving exceptional results.

Kunle is recognized as one of the foremost Nigerian lawyers in immigration, employment and labour matters and is frequently sought after as Nigerian counsel for large international companies. He is also well regarded in connection with dispute resolution particularly in relation to employment and labour related dispute settlement. He is said to be the "*the first port of call*" and has a "*long standing reputation*" in the market (Who's Who Legal – Nigeria 2022).

Kunle advises multi-national corporations, Fortune 500 companies, high net-worth individuals and Nigerian companies on issues relating to regulatory compliance with particular reference to expatriate and Nigerian employee work authorization in and out of Nigeria and corporate and commercial law.

Kunle is the Managing Partner and Chair of the Firm's Immigration and Employment Law Practice Groups. He is also the Co-Chair of the Firm's Dispute Resolution Practice Group.

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## TRENDS

### The introduction of artificial intelligence in the workplace

There is currently no specific legislation on the use or limitation of the use of artificial intelligence (AI) in Nigerian workplaces. In recent times, AI has gained wide acceptance and usage by a vast majority of businesses and companies in Nigeria, cutting across various sectors such as healthcare, telecommunications, law, agriculture, banking and finance, among others. The use of AI adaptations like chatbots, virtual assistants, inventory management, content management, recruitment and talent sourcing, and cybersecurity/fraud management has gained traction. Businesses, both large and small, are increasingly embracing AI to enhance processes, customer experiences and recruitment.

There are significant considerations for the use of AI in the workplace, including data privacy, data protection and intellectual property rights. Nigeria has established laws to regulate data protection and privacy, as well as intellectual property. The Nigerian Constitution guarantees and protects the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications. Further, the Nigerian Data Protection Act, 2023 and Nigerian Data Protection Regulations provide for more detailed protections in relation to data protection, while the Copyright Act, 2022, Patent and Design Act and Trademark Act are the principal laws that regulate the protection and administration of intellectual property rights.

### Remote work and its implications for the payment of taxes where employees work from another jurisdiction

In Nigeria, an employee who is resident in another jurisdiction but earns income from Nigeria is liable to pay tax in Nigeria. Section 2 (1)(b)(iv) of the Personal Income Tax Act, 2011 (PITA) provides for the category of persons liable to pay tax to include persons resident outside Nigeria who derive income or profit from Nigeria.

This means that where an employee working remotely in another jurisdiction receives income or profit from a company or business in Nigeria, such income or profit is subject to tax in Nigeria. The percentage payable as tax is to be remitted to the Federal Inland Revenue Service in terms of section 2(2) of the PITA.

With respect to remote employees, the income chargeable includes any salary, wage, fee, allowance or other gain or profit from employment, including compensation, bonuses, premiums, benefits or other perquisites allowed, given or granted to any temporary or permanent employee other than expenses incurred by them in the performance of their duties.

Similarly, individuals who are resident in other jurisdictions but engaged in trade or business with partial operations in Nigeria are required to pay taxes on the profits or income earned from those projects based in Nigeria, provided that:

- the individual does not have a fixed base in Nigeria from where they carry on such trade or business;
- the individual, does not habitually operate a trade or business by a proxy in Nigeria authorised to conclude contracts on their behalf;
- the trade or business in Nigeria does not involve a single contract for surveys, deliveries, installations or construction; or
- the trade or business is not between persons, both of whom are controlled by some other person and such that conditions are made or imposed between such persons in their commercial or financial relations, which in the opinion of the relevant tax authority is deemed to be artificial or fictitious.

Further, where a person situated outside Nigeria is engaged in the business of technical, management, consultancy or professional services to a person in Nigeria, the profits or gains shall be deemed to be derived and taxable in Nigeria to the extent that the individual has significant economic presence in Nigeria, provided that the withholding tax on the income will be the final tax on the income of such non-resident who does not fall within the scope of the non-resident highlighted above. Section 25 of the Finance Act, 2020 states that the Minister of Finance determines and defines what constitutes significant economic presence for this purpose, but the minister is yet to do so.

## HIRING DECISIONS

### Pre-hire checks

**May employers conduct pre-hire checks?**
Yes. Employers may conduct pre-employment checks. There is no restriction on this in Nigeria labour law. However, in carrying out any pre-employment checks, the employer must not act in a discriminatory manner. The employer must also obtain the consent of the prospective employee before carrying out any necessary checks.

The employer must also ensure that it does not conduct any checks in a manner that breaches a potential employee's constitutional right to privacy. In practice, this requires an employer to obtain the consent of the prospective employee before carrying out such background checks.

The HIV and AIDS (Anti-Discrimination) Act, 2014, prohibits employers from carrying out HIV/AIDS tests on employees or prospective employees without their prior consent.

### Hiring options

**What hiring options are available to employers?**
Hiring options include:

- employment through recruiters or labour brokers;
- employment based on a fixed-term or part-time contract;
- employment as an apprentice; or
- permanent employment.

Relevant permits may need to be obtained from the Minister in the Oil and Gas Sector in Nigeria and medical examinations will need to be conducted.

**Is there a concept of dual employment or deemed employment in Nigeria? In what instances would this apply?**
The concept of dual or deemed employment is not expressly provided for under Nigerian labour law.

There is a growing practice of triangular employment i.e. employment by a person for the service of another person, for example the use of an employer of record services; and casualisation. These are concepts recognised under Nigerian law.

The concept of deemed employment is similar to the Nigerian concept of triangular employment. According to a plethora of judicial decisions, case in point, *Anthony Agum v UNICEM and Another*, unreported judgment of Kanyip, J. in Suit No: NICN/CA/71/2013 delivered on 3 March 2017, an employee in a triangular employment will be deemed to be the employee of the third-party employer and the end-user client.

# FOREIGN EMPLOYEES

## REQUIRE A PERMIT TO WORK IN NIGERIA

### Immigration

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

Yes. Foreign employees require a permit to work in Nigeria. The type of work permit required will depend on the duration and nature of the assignment.

For short-term assignments, (between 30 and 60 days) the employer will apply for a temporary work permit (TWP). The TWP is a single-entry work visa valid for 30 to 60 days.

For long-term assignments, the employer must obtain an expatriate quota from the Federal Ministry of Interior. The quota will state the number of job positions the employer can hire foreign employees for, and the job designations. On the basis of the quota, the employer then needs to apply for a subject to regularisation (STR) visa on behalf of the employee and, upon entry into Nigeria, the employer will apply for a Combined Expatriate Residence Permit and Aliens Card (CERPAC) which is a combined work and residence document.

For foreign employees who are nationals the Economic Communities of West African States (ECOWAS), the employer must apply for ECOWAS work permits.

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

The law does not expressly state any limitation on the employer's discretion to determine new hires. The employer may, however, state the conditions of qualifications for employment in the offer of employment, which should not be discriminatory in any regard. The minimum age for workers under the Labour Act is 16.

Employers must consider data privacy in the determination of new hires, including the limitations on the processing of their personal data and ensuring the security and confidentiality of personal data within the employer's possession.

There are no further limitations on the determination of new hires.

## CONDITIONS OF EMPLOYMENT

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

Yes. The Labour Act includes 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.

Employment contracts must contain the following information:

- the name of the employer;
- the name and address of the employee and place and date 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 due to sickness or injury and provision for sick pay; and
- any other special conditions of the contract.

**Are zero-hour contracts permissible (contracts without a minimum set of working hours or any basic salary undertaking)?**

Zero-hour contracts are not expressly regulated nor provided for under Nigerian law.

However, the labour laws in Nigeria emphasise the protection of employees' rights and where there is any form of violation of an employee's rights, the employee can seek redress at the National Industrial Court of Nigeria (NICN), whether there is a contract of employment or not, so far there are established standards available to prove the existence of an employer/employee relationship.

### Probation

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

A probationary period is not expressly required by Nigerian law and is a matter of the provisions of the employment contract and contractual flexibility. There is no required maximum period of probation, however, the probationary period must not violate the statutory rights of the employee.

## Minimum employment rights

**Are any employees excluded from minimum employment rights?**
Certain employees are excluded from minimum employment rights, as outlined in the Labour Act. These employees include:

public servants exercising administrative, executive, technical or professional functions and persons employed on a vessel or aircraft.

**Is there a minimum wage requirement?**
The existing law on minimum wage is outdated as it fails to address the current economic reality. In 2019, the minimum wage was set at NGN 30,000 and the law provided for its upward review every five years to align with economic changes. The Federal Government announced the introduction of a new minimum wage, which is yet to be implemented, although the tripartite committee set up by the federal government on the national minimum wage is yet to conclude its negotiations. It was expected that the new minimum wage would have been concluded by and taken effect on 1 May 2024, but there are still conversations and negotiations underway between the relevant authorities and we expect a final announcement and a new effective date in due course.

**What are the standard/maximum working hours? Are there prescribed minimum resting periods during the normal working day/week?**
Generally, the duration of work is determined by the employment contract between the employer and employee.

The Labour Act provides that work hours are fixed according to mutual agreement of the parties or collective bargaining with the relevant organisation or by an industrial wages board where there is no collective bargaining.

Further, the Nigeria Labour Act does not specifically state the duration for work hours but states that where a worker has worked for more than six hours in a day, their work shall be interrupted (to the extent necessary, having regard to its character and duration and to working conditions in general) by allowing one or more suitably spaced rest intervals of not less than one hour on the aggregate, except:

- Where unforeseen circumstances render them necessary.
- Where it is found to be unavoidable in view of the nature of the work and the working conditions in general; time off for a meal at the worksite or in the immediate vicinity may be substituted for the rest interval.
- The employer must bear in mind global best practices and ensure that the employee is entitled to a break during the day.
- What are the minimum requirements relating to overtime?

Overtime is subject to the terms agreed upon by the parties to the employment contract. Any time worked over and above what is agreed to between the employee and employer will be considered overtime. However, the above position is subject to the provisions of the employment contract.

**What are the minimum requirements relating to annual leave?**
Employees are entitled to at least six paid working days of holiday leave in a 12-month period. However, this is subject to the provisions of the employment contract.

**What are the minimum requirements relating to sick leave?**
Employees are entitled to 12 days of paid sick leave annually. However, this is subject to the provisions of the employment contract.

**What are the minimum requirements relating to parental leave, and does it apply to both parents or only mothers?**
The labour law provides for a maternity leave period of six weeks before birth and six weeks after delivery.

Paternity leave is not generally applicable in Nigeria. However, certain jurisdictions in Nigeria, such as Lagos state, Enugu State and a few other jurisdictions, have introduced paternity leave of two weeks.

However, this is subject to the provisions of the employment contract.

**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 is not an automatic entitlement to a bonus payment. This is a payment that is within the employer's discretion.

**What statutory payments is an employer required to make to in relation to employees, including deductions from employees' salaries and employer contributions, such as unemployment insurance to cover periods of unemployment?**
Based on the applicable labour and employment laws in Nigeria, employers are required to make certain statutory deductions and payments from employees' salaries and to make contributions to certain funds on behalf of and for the benefit of employees. Failure to make these contributions when due can result in serious consequences. These deductions include:

## National Housing Fund

The National Housing Fund (NHF) was established by the NHF Act, 1992. By virtue of the NHF Act, an employer is required to register an employee with the NHF, deduct an NHF contribution of 2.5% of an employee's monthly basic salary, and remit the deduction to the Federal Mortgage Bank of Nigeria (FMBN) within one month after the salary has been paid to the employee. Employers are liable to a penalty of NGN 50,000 for late remittance.

Employees with an annual income of below NGN 3,000 and expatriates are exempt from NHF contributions.

The NHF is designed to provide affordable housing finance for Nigerian employees, particularly those in the low- and middle-income categories. The funds contributed by employees are pooled together and managed by the FMBN to offer low-interest housing loans.

## National Health Insurance Scheme

The National Health Insurance Scheme (NHIS) was set up as a public-private partnership to provide accessible, affordable and quality healthcare for all Nigerians. Participants of the NHIS scheme have to make contributions to be able to access health insurance.

Every employer with at least 10 employees is obligated to contribute to the NHIS on behalf of its employees. An employer must contribute the equivalent of 10% of the basic monthly salary of an employee while the employee contributes 5%, which is deducted from their salary. The healthcare covers the contributor, contributor's spouse, and up to four biological children under 18. However, a contributor with more than six family members can register the additional people as dependent(s).

## Pay-As-You-Earn

Nigeria adopts a Pay-As-You-Earn system to calculate employees' income tax. This tax rate progresses from 7% to 24% of taxable income depending on the employee's salary range.

According to the PITA, the following rates are chargeable on the income of an employee working with a company registered in Nigeria and must be paid in respect of the salary and remitted annually:

- First NGN 300,000 will attract a 7% rate
- Next NGN 300,000 will attract an 11% rate
- Next NGN 500,000 15% rate
- Next NGN 500,000 will attract a 19% rate
- Next NGN 1,600,000 will attract a 21% rate
- Above NGN 3,200,000 will attract a 24% rate

## Pension contribution

Under the Pension Reform Act, 2014 (PRA), employers in Nigeria are required to deduct and remit monthly pension contributions to an approved pension fund administrator.

The statutory contribution rates are 8% of an employee's monthly salary (employee contribution) and a 10% employer contribution.

These rates may be increased by mutual agreement between the employer and employee, provided that the National Pension Commission (PenCom) is notified of such revisions.

Employers must remit pension contributions within seven working days after paying salaries. Failure to comply will result in a penalty of at least 2% of the outstanding amount for each month of default.

## Industrial Training Fund

According to section 6 of the Industrial Training Fund Act, 2011 (ITF Act), employers with a minimum of NGN 50 million turnover or having more than five employees are required to contribute to the Industrial Training Fund (ITF) at the rate of 1% of the company's total annual payroll.

Employers must register for ITF at the relevant zonal office and submit a complete set of ITF returns for all their employees. This includes the evidence of ITF payment, completed ITF form, copy of the audited financial statement and cover letter. ITF returns must be filed within three months after the end of the financial year. Late payment attracts a penalty of 5% of the outstanding amount.

**NO PROVISION IS MADE FOR FAMILY RESPONSIBILITY LEAVE.**

## National Social Insurance Trust Fund

The Employees' Compensation Act, 2010 (ECA) provides compensation for workers or their dependents in the event of death, injury, disease, or disability arising out of or during employment. The National Social Insurance Trust Fund (NSITF) applies to every employer and employee in the public and private sectors. Employers are required to contribute and amount equivalent to 1% of employees' monthly pay to the NSITF.

However, this contribution is not deducted from an employee's monthly salary. Rather, it is a statutory contribution by an employer. Payment is to be made by the employer Before the sixteenth day of the succeeding month after salary payment. Employers are liable to a penalty of 10% for the late or un-remitted amount.

## Group life insurance

Under the PRA, every employer with at least three employees is required to maintain a group life insurance policy for all its employees. The policy must cover a minimum of three times the employee's annual total emoluments (basic salary, housing and transport allowances).

Employers must ensure that the policy is purchased from a licensed insurance company and that proof of compliance is submitted to the PenCom. Failure to maintain group life insurance is a violation of the law and may result in penalties.

## Workplace compensation

The ECA requires employers to make monthly contributions to the Employees' Compensation Fund, which is managed by the NSITF. This fund provides compensation for employees who suffer work-related injuries, disability, disease or death in the course of their employment.

According to Nigerian law, the NSITF is applicable to all employers and employees in the public and private sectors and employers are required to contribute a minimum 1% of employees' monthly remuneration (excluding pension contributions, bonuses, overtime payments, and one-off payments such as a thirteenth cheque) to the NSITF. In the event of a workplace injury or fatality, affected employees (or their dependents) are entitled to compensation, including medical expenses, disability benefits or death benefits.

The contributions payable in respect of each month shall fall due on the last day of the month. If any contribution is not paid within the stipulated timeframe, a penalty equal to 5% of the unpaid amount shall be added for each month or part of the month after the date when payment should have been made, and any amount added shall be recoverable as a debt owing to the board by the employer. Failure to comply with workplace compensation obligations may also lead to other penalties and liabilities for 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?**

There are no provisions for automatic periodic increases. The automatic entitlement to periodic increase in wages or otherwise is subject to the terms of the employment contract, as agreed by the employee and the employer.

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

An employer cannot unilaterally alter the terms contained in the employment contract without the acceptance and consent of the employee.

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

The Constitution makes provision for freedom of association and therefore grants employees the constitutional right to trade union engagement that may help them in their interactions with their employer.

**What are the legal requirements concerning trade unions and worker organisations, including registration obligations, organisational rights, and entitlements to represent employees in the workplace?**

The legal framework governing trade unions and workers' organisations in Nigeria sets out specific requirements to ensure their lawful operation and effectiveness in representing employees. These requirements are primarily outlined in the Trade Unions Act, 2005 (TUA), which provides for the registration, rights and responsibilities of trade unions, as well as their entitlement to represent employees in the workplace. The key provisions of the act are detailed below.

## Legal requirements

*Registration requirement*

A trade union is expected to be registered to lawfully carry out the purpose for which it was formed. Section 2(1) of the TUA states that: *"A trade union shall not perform any act in furtherance of the purposes for which it has been formed unless it has been registered under this act:"*

Section 3 provides that an application for the registration of a trade union shall be made to the Registrar in the prescribed form and shall be signed, in the case of a trade union of workers, by at least 50 members of the union, and in the case of a trade union of employers, by at least two members of the union.

Further, the act prevents the registration of a trade union where one already exists for the same category of workers (Section 3(2) of the TUA). The trade union is also required to have registered rules covering matters stipulated in the TUA.

*Restriction on membership*

Section 11 of the TUA prohibits certain categories of people from establishing or being members of a trade union and they include employees in the:

- army, navy or air force;
- police force;
- Customs Service or Customs Preventive Service;
- immigration service;
- prison service;
- Nigerian Security Printing and Minting Company Limited;
- Central Bank of Nigeria;
- Nigerian Telecommunications Limited;
- federal or state government establishment the employees of which are authorised to bear arms; and
- such other establishments as the relevant minister may, from time to time, by order specify.

It is essential to note that these categories of employees are not prevented from setting up joint consultative committees in the establishments concerned.

*Dues from trade union members*

Section 17 of the TUA provides that upon the registration and recognition of any of the trade unions specified in the Third Schedule to the act, the employer shall make deduction from the wages of every worker who is a member of any of the trade unions for the purpose of paying contributions to the trade union so registered; and remit such deductions to the registered office of the trade union within a reasonable period or such period as may be prescribed from time to time by the Registrar.

*Annual returns*

Before 1 June each year, every registered body must an annual return to the Registrar in the prescribed form which shall be made out to such date as may be prescribed and shall be certified as correct by the duly appointed auditor.

*Trade union rights/employee rights*

*Right to membership*

Section 40 of the Constitution and section 12 of the TUA state that a person who is otherwise eligible for membership of a particular trade union shall not be refused admission to membership of that union by reason only that they are of a particular community, tribe, place of origin, religion or political opinion. Also, section 9(6) of the Labour Act further prohibits the restriction of employees from joining trade unions or relinquishing membership in same.

*Right to strike*

A strike is the cessation of work by a body of employed persons acting in combination and under a common understanding, done as a means of compelling their employer, or to aid other workers in compelling their employer or any persons, to accept or not to accept terms of employment and physical conditions of work. However, section 31 of the TUA provides that:

- no person, trade union or employer shall take part in a strike or lock-out or engage in any conduct in contemplation or furtherance of a strike or lock-out unless:
  - the person, trade union or employer is not engaged in the provision of essential services;
  - the strike or lock-out concerns a labour dispute that constitutes a dispute of right; or
  - the strike or lock-out concerns a dispute arising from a collective and fundamental breach of contract of employment or collective agreement on the part of the employee, trade union or employer;
- the provisions for arbitration in the Trade Disputes Act, 2004 (Trade Disputes Act) have first been complied with; and
- in the case of an employee or a trade union, a ballot has been conducted in accordance with the rules and constitution of the trade union at which a simple majority of all registered members voted to go on strike.

*Right to representation in the workplace*

A member of a trade union may be duly represented in a dispute at a workplace. The NICN has the exclusive power in relation to civil causes to hear dispute relating to trade unions, employment, etc.

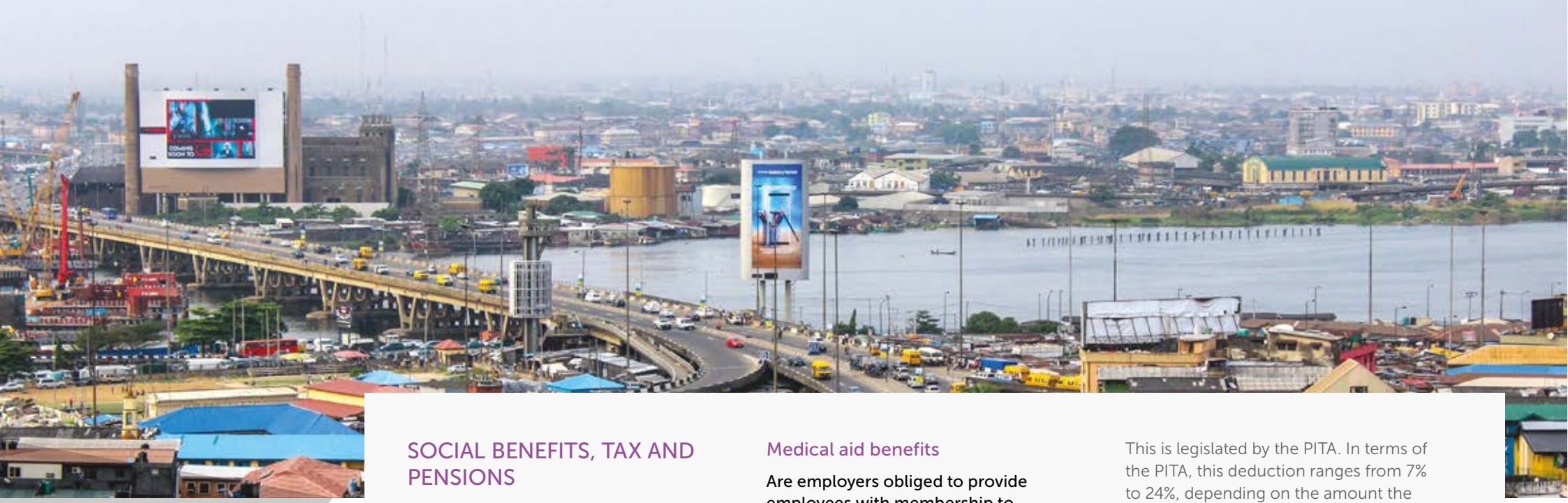
Right to collective bargaining

Section 91 of the Labour Act defines collective bargaining as the process of arriving at, or attempting to arrive at, a collective agreement.

A collective agreement is an agreement in writing regarding working conditions and terms of employment concluded between one or more trade unions or other organisations of, or representing, workers (or an association of such organisations) and an employer, a group of employers, or an organisation of, or representing, employers (or an association of such organisations).

A collective agreement is interpreted by the NIC. Trade unions elect a representative to negotiate with the employer. Collective agreements generally relate to the following rights:

- Right to negotiate: Trade unions have the right to negotiate the terms and conditions of employment with employers on behalf of employees who are members of the trade union.
- Right to peaceful picketing.



## SOCIAL BENEFITS, TAX AND PENSIONS

**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 ECA. 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 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?**
This is not expressly provided for in the labour laws.

### 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 NHIS. Participation in the scheme is not mandatory, but operational guidelines state that participation is mandatory for private sector employers with 10 or more employees. The employer is required to contribute an amount equivalent to 10% of the employee's basic salary, and 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 personal income tax. This is legislated by the PITA. In terms of the PITA, this deduction ranges from 7% to 24%, depending on the amount the employee earns.

**Do employees who work remotely from a foreign jurisdiction and pay taxes in their country of residence, require a Nigerian work permit to render services to a Nigeria entity?**
No. A Nigeria work permit is not required if the foreign employee does not reside in Nigeria.

### 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.

## Skills development

**What legislative frameworks exist to support workforce skills development, including strategies for upskilling, learnership provisions, financing for skills development, and the regulation of employment services?**

In Nigeria, several legislative frameworks support workforce skills development, upskilling strategies, learnership provisions, financing for skills development and the regulation of employment services. These include:

- **Constitution:** The Constitution lays the foundation for labour rights by guaranteeing the right to work, fair wages and equal opportunities under Chapter II. These provisions emphasise economic and social objectives that promote workforce skills development and a well-regulated labour market. It also serves as the framework which grants the legislature the power to enact laws and policies towards skill development and the regulation of employment services.
- **Labour Act:** This serves as the primary legislation governing employment relationships in Nigeria. It regulates employment contracts, working conditions and workers' rights, thereby ensuring fair treatment of employees. With respect to skills development, the Labour Act provides apprenticeship arrangements, which facilitate workforce skill development by enabling young workers to acquire practical skills under structured training programs.
- **ECA:** The ECA ensures that employees who suffer workplace injuries, occupational diseases or disabilities receive financial compensation and rehabilitation support, thereby protecting workers and maintaining productivity. Section 16 of the act specifically provides for vocational rehabilitation programmes, which help injured employees reintegrate into the workforce.
- **Factories Act, 2004:** This regulates workplace safety and mandates that employers must provide a hazard-free working environment. Section 23 of the act specifically requires employers to provide health and safety training to employees, ensuring that workers understand risk management in industrial settings.
- **Discrimination Against Persons with Disabilities (Prohibition) Act, 2018 (DAPDA):** This promotes an inclusive labour market by prohibiting discrimination against persons with disabilities in the job market. It mandates that organisations reserve at least 5% of employment opportunities for persons with disabilities, ensuring workforce diversity and skill development among marginalised groups.
- **Nigerian Oil and Gas Industry Content Development Act, 2010:** This law prioritises local workforce participation in the oil and gas sector. It mandates that Nigerian workers be given preference in employment and training opportunities, and promotes skills transfer and reduced dependency on expatriate labour.
- **TUA and Trade Disputes Act:** These acts govern collective bargaining, dispute resolution and industrial relations, ensuring that employment services comply with legal provisions for fair labour practices.
- **National Minimum Wage (Amendment) Act, 2024:** This sets the legally mandated minimum wage for workers in Nigeria, ensuring that employment services adhere to fair wage policies.
- **National Industrial Court Act, 2006:** This act establishes a legal avenue for resolving employment-related disputes, ensuring that employment services operate within a regulated dispute resolution framework.
- **Nigeria National Youth Policy:** This recently enacted policy provides a framework for empowering young people by promoting access to education, vocational training and entrepreneurship programmes, ensuring their active participation in the labour market.
- **ITF Act:** The ITF Act establishes a statutory body responsible for workforce training and development. Under the ITF Act, employers are required to contribute at least 1% of their annual payroll to fund employee training programmes. The ITF organises skill acquisition programmes and provides financial support for training initiatives, ensuring that workers remain competitive in the labour market.
- **Students Industrial Work Experience Scheme (SIWES):** SIWES is a government initiative managed by the ITF, which allows students in technical and vocational fields to gain hands-on experience in industries related to their studies. This programme bridges the gap between academic knowledge and industry needs, improving graduates' job readiness.
- **National Vocational Qualification Framework:** This standardises vocational training and certification in Nigeria, ensuring that individuals acquire recognised and industry-relevant skills. It provides a structured system for skill assessment, training and certification at different levels, supporting lifelong learning and career advancement.

## Affirmative Action

**What affirmative action obligations do employers have under the law, and what measures must they implement to ensure compliance?**

Affirmative action measures refer to proactive steps taken by employers to promote equal opportunities in the workplace by addressing disparities based on legally protected characteristics such as sex, age, race and disability. These measures seek to foster inclusivity and eliminate discrimination, aligning with Nigeria's legal framework on workplace equality.

While there is no single codified principle of affirmative action in Nigeria, various labour laws impose obligations on employers to promote equal opportunities and prohibit discriminatory employment practices. These obligations are embedded in multiple legislative frameworks, including the Constitution, the Labour Act and sector-specific regulations.

## Affirmative action obligations under Nigerian law

- Section 42 of the Constitution as well as the Labour Act prohibit discrimination on grounds such as ethnicity, gender and disability. Additionally, the DAPDA imposes a duty on employers to ensure that at least 5% of their workforce comprises persons with disabilities. Section 28 of the DAPDA guarantees individuals with disabilities the right to work on an equal basis with others, emphasising access to an inclusive labour market.
- Employers must ensure that all individuals, regardless of disability, have equal access to employment opportunities, and decisions not to hire a disabled person must not be based on their disability alone.
- An employer must prioritise the employment of indigenous persons in Nigeria. For instance, the National Content Development for the Power Sector Regulation, 2014 mandates all licensees in the power sector to have the development of Nigeria content as a key component of general operation and execution of projects.
- Employers must establish bias-free disciplinary processes, ensuring marginalised employees are not disproportionately penalised. Underrepresented employees must also be given a voice in developing workplace policies and in decision-making.

## Compliance measures employers must implement

- **Equal opportunity recruitment policies:** Employers should adopt unbiased hiring practices, ensuring that recruitment decisions are based on merit rather than gender, ethnicity or disability status and implement affirmative hiring quotas where applicable, such as the 5% employment requirement for persons with disabilities.
- **Inclusive recruitment and promotion processes:** Employers need to create a structured, bias-free selection process where all candidates, regardless of background, can fairly present their qualifications. Diverse hiring panels should be used to ensure fair evaluation. Such panels must provide interview feedback so candidates understand where they can improve in future and are aware of the reason for any rejection.
- **Employee voice in decision-making:** Companies should have open forums or committees where employees, especially those from underrepresented groups, can express concerns. Anonymous feedback mechanisms should be in place to ensure employees feel safe speaking up. Employers should establish a whistleblower protection policy to safeguard employees who raise workplace concerns of discrimination.
- **Workplace inclusivity and diversity policies:** Employers should develop anti-discrimination policies aligned with the Labour Act and DAPDA, alongside diversity and inclusion training for human resource personnel and management teams.
- **Gender equity measures:** Employers must implement gender-balanced recruitment and equal pay policies and provide maternity and paternity leave benefits beyond the statutory minimum, where feasible.
- **Physical accessibility:** Employers should endeavour to modify workplaces for employees with disabilities by incorporating ramps, elevators, adapted restrooms and assistive technologies. Reasonable accommodations, such as flexible work arrangements and specialised equipment, should also be provided to enable people with disabilities to perform their duties effectively.
- **Transparent disciplinary and grievance procedures:** Employers need to have clear, written policies for handling complaints and disputes, ensuring marginalised groups can respond to allegations and be heard appropriately. Fair treatment must be guaranteed, regardless of disability, gender or other classifications.

## DATA PRIVACY

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

At present there is no specific regulation on data privacy. There was a proposal for a new bill, the Frivolous Petition Bill, 2015, to be legislated in order to allow the monitoring of social media engagement, however, the 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:

- an amalgamation of the business undertakings of two entities; and
- 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)(ii)(e) of the Securities and Exchange Commission Rules, 2013 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 transfer of an employee must be subject to the consent of the employee, and the endorsement of an authorised labour officer where applicable. The labour officer will need to establish that the workers have consented to the transfer. In the oil and gas sector, employers with interest in any oil license/permit or holding any such license/permit, and who intend to release or disengage their staff, must first seek and obtain the approval of the Minister of Petroleum Resources.

**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.

**THE RELATIONSHIP BETWEEN AN EMPLOYER AND EMPLOYEE IS REGULATED BY THE TERMS AND CONDITIONS SET OUT IN A CONTRACT OF EMPLOYMENT.**

**Is it possible to change terms and conditions of employment in the context of a business transfer?**
Yes. Section 10 of the Labour Act 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?**
This is 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 set out in a contract of employment. These terms determine matters such as the rights of the parties to terminate and the grounds upon which the parties may exercise that 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 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, provided the employer has complied with the requirement to give notice. However, where no provision is made in the contract for the length of notice required for the termination, then section 11 of the Labour Act shall apply. 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 pertaining to the grounds that constitute a lawful and fair termination of employment. However, according to the recent judicial posture of the National Industrial Court of Nigeria in *Ebere Onyekachi Aloysuis v Diamond Bank Plc* [2015] 58 NLLR 92, termination without reason now constitutes unfair labour practice, which is contrary to international labour practice. Consequently, employers are now required to provide a reason for the termination of employment of an employee.

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 judged to be an unfair termination. In adjudicating this, the courts have tended to rely on the terms and conditions to determine if the termination was lawful and fair. Therefore, for a termination to be fair or legal it must be in line with the employee's contract of employment's terms and conditions, in the absence of which, the law has usually considered there to be an implied term of the contract of employment that it is terminable upon reasonable notice. Once the termination is 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 where the contractual or statutory notices for termination were not given if the employer exercised its right to summary dismissal, provided the reason for doing so was justifiable and the rules of natural justice were complied with.

## Termination of misconduct

**What fair process requirements exist?**
Generally, an employee may be dismissed for misconduct subject to the dismissal process as agreed by the parties in the employment agreement, if any. Where the contract of employment contains grounds upon which the employment can be terminated for misconduct, the employer is required to offer the employee an opportunity to have a fair hearing to defend themselves. In addition, the process must adopt the principles of impartiality and natural justice.

**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. However, this is subject to the agreed provisions of the employment contract or the company's employee handbook and relevant workplace policies.

**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

reinstatement where there was a breach of statute. However, if it was a mere breach of contract – i.e. wrongful dismissal, the employee would only be entitled to compensation.

**Is third-party approval required for termination/termination documents?**
Third-party approval is not necessary.

## Termination for incapacity

An employee can be dismissed for incapacity if they become incapacitated due to accident or sickness during the course of employment or if they are found to be unfit for employment after a 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?**
For a termination to be fair or legal it must be in line with the employee's terms and conditions, in the 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.

**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 employee 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 key dispute resolution process is that the matter will be referred to the NICN charged with the responsibility and jurisdiction to entertain all labour related disputes in Nigeria. The NICN also offers alternative dispute resolution alternatives for labour and labour related disputes using mediate and or conciliation.

**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 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 Nigeria Labour Act. Redundancy is defined as the involuntary and permanent loss of employment caused by an excess in manpower. The redundancy provisions in the Nigeria Labour Act are only applicable to *"workers"* as defined in the Nigeria Labour Act. The employer bears the onus to prove 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 key dispute resolution process is that the matter will be referred to the NICN charged with the responsibility and jurisdiction to entertain all labour related disputes in Nigeria The NICN also offers alternative dispute resolution alternatives for labour and labour related disputes using mediate and or conciliation

**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.

**Is it permissible to offer employees a voluntary separation package during a redundancy process? Does this undermine the legitimacy of the retrenchment/ redundancy process?**
Yes. The employer and employee may agree to a mutual termination, including a voluntary separation package, in contrast to the redundancy process.

## Termination benefits

**Are any termination benefits payable in the event of a dismissal for misconduct?**
The employer must make its best effort 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?**
This is not expressly provided in the labour laws. However, the above position is subject to the provisions of the employment contract between the employer and employee, or any contrary provisions in the company's employee handbook or internal policies.

**Are any termination benefits payable in the event of dismissal for operational requirements? How is severance pay calculated?**
Severance pay is regulated by the terms of the contract of employment and is usually calculated in relation to length of service, age and the final salary of the employee.

**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 at 65, or after 35 years of service; at 70 for university professors and judges; and at 60 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 the discretion to determine the retirement age for their employees (60 years old or 35 years of service is the usual practice).

**RESTRAINT OF TRADE AGREEMENTS AS CONTAINED IN EMPLOYMENT CONTRACTS ARE COMMON AND VALID IN NIGERIA.**

## POST-TERMINATION RESTRAINTS

### Enforceability of non-compete provisions

**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, and the nature of information and knowledge acquired by the employee. Since these 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; 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. If an employer initiates an action to enforce a clause, the employer bears the onus to prove the reasonableness of the restraint.

### Confidentiality and trade secrets

**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 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 be referred to for interpretation 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): | Kinyarwanda, English and French |
| Population (approx.): | **14,46 million** |
| Unemployment rate (2024): | **11.3%** |
| Name of court for labour matters: | Special chamber of intermediate courts |
| 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 residence permit to live and work in Rwanda |

## BACKGROUND

### Applicable legislation

- The Constitution of the Republic of Rwanda (Official Gazette No. Special 4 August 2023) (Constitution)
- Law No. 66/2018 of 30 August 2018 regulating labour in Rwanda (Labour Code)
- Law No. 027/2023 of 18 May 2023 amending law No. 66/2018 of 30 August 2018 regulating labour in Rwanda
- Law No. 003/2016 of 30 March 2016 establishing and governing maternity leave benefits scheme
- Law No. 049/2024 of 4 June 2024 amending Law No. 003/2016 of 30 March 2016 establishing and governing maternity leave benefits scheme
- Law No. 05/2015 of 30 March 2015 governing the organisation of pension schemes
- Law No. 027/2022 of 20 October 2022 establishing taxes on income (Income Tax Law)
- Law No. 058/2021 of 13 October 2021 relating to the protection of personal data and privacy (Data Protection Law)
- Law No. 48/2015 of 23/11/2015 governing the organisation, functioning and management of health insurance schemes in Rwanda (Health Insurance Schemes Law)
- Presidential order No. 086/01 of 12 December 2024 determining the contribution rate to mandatory pension scheme (Presidential Order on Contributions to Mandatory Pension Scheme)
- Prime Minister's Order No. 105/03 of 30/09/2020 related to the community-based health insurance scheme contributions (Prime Minister's Order on CBHIS)
- Ministerial Order No. 007/19.20 of 17 March 2020 determining Core Elements of a Written Employment Contract (Ministerial Order on Core Elements of an Employment Contract)
- Ministerial Order No. 02/MIFOTRA/23 of 1 August 2023 on occupational health and safety, organisations employees' organisations and employers' organisations, child employment, employment of a foreigner and leave
- Ministerial Order No. 01/MIFOTRA/23 of 13 June 2023 on working hours and public servants governed by employment contracts (Ministerial Order on Working Hours and Public Servants Governed by Employment Contracts)
- Ministerial Order No. 002/19.20 of 17 March 2020 establishing the List of Gross Misconduct

### Regulatory rating

*Heavily regulated.*

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**Aimery de Schoutheete**
Partner

Both offices anchor our presence in the Sub-Saharan region and reflect our commitment to the DRC, Rwanda and Burundi. Liedekerke is very much committed to the region's future.

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**Contact:**

**Email:** a.deschoutheete@liedekerke.com
**Phone:** +32 2 551 15 76

## TRENDS

### General

In the recent past, there have been a number of changes in the laws and regulations in Rwanda. For example, the Labour Code was amended in 2023 and several ministerial orders were passed, including the Ministerial Order No. 02/MIFOTRA/23 of 1 August 2023 and Ministerial Order on Working Hours and Public Servants Governed by Employment Contracts. Additionally, there have been changes to pension contributions of employees to the Rwanda Social Security Board (RSSB) which are discussed further below.

### The introduction of artificial intelligence in the workplace

The use of artificial intelligence (AI) in the workplace has started taking shape in Rwanda. Some employers (companies and other organisations) have started applying/using AI tools to expedite their daily work operations and businesses. Despite the emergence of AI usage in Rwanda, there are not yet any explicit regulations in place that specifically regulate AI except for the available data protection and privacy laws as well as laws related to information technology, which are still general in nature.

### Data protection and privacy

There is no mention of privacy regulations in the Labour Code. Generally speaking, privacy provisions are contained in the Constitution. Although not expressly stated, it may reasonably be assumed that this provision could be interpreted to apply to the employment environment. However, in terms of health and safety conditions of an employee, the Ministerial Order No. 02/MIFOTRA/23 of 1 August 2023 requires an employer to ensure the confidentiality of personal and medical data of an employee, intern or apprentice.

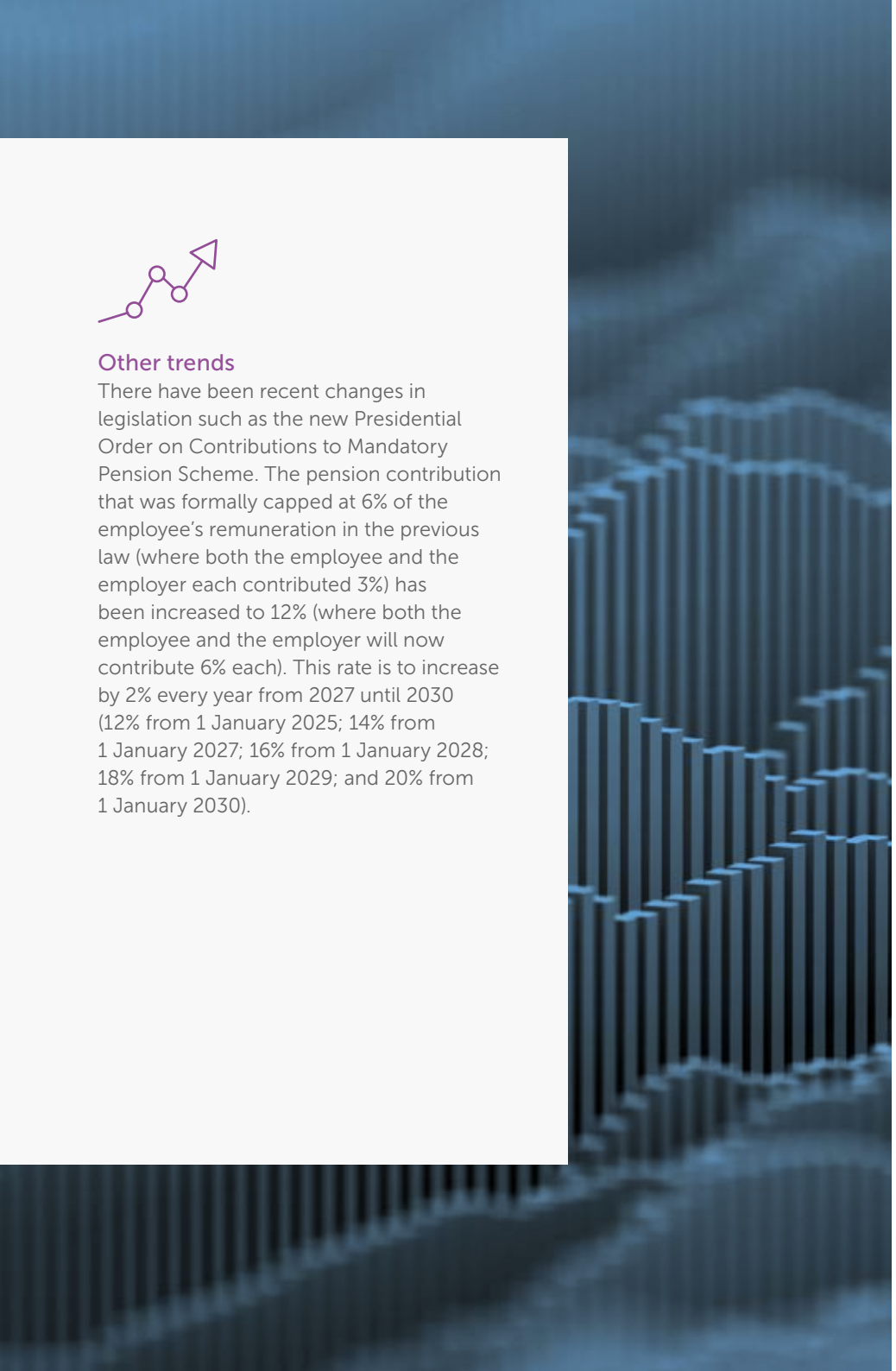
In 2021, Rwanda promulgated the Data Protection Law. This law protects personal data and ensures privacy of individuals (including employees) in Rwanda.

One of the material elements of the Data Protection Law is the requirement for clear and unambiguous consent from an individual to collect, store and process their personal data. The Data Protection Law places an obligation on employers (data controllers and data processors) to ensure proper storage of personal data to avoid any loss or misuse by third parties and requires data controllers and processors to seek consent from data subjects (including employees) prior to collection, use or sharing of personal data with third parties.

The Data Protection Law requires employers (data controllers or data processors) to designate a data protection officer and publish the details of the data protection officer's contract and to share it with the National Cyber Security Authority. The Data Protection Law also outlines the duties of a data protection officer. Another key labour element related element in the Data Protection Law is that a data processor or data controller who is neither established in nor resides in Rwanda but processes personal data of data subjects located in Rwanda must designate, in writing, a representative in Rwanda.

### Remote working and its implications for the payment of taxes where employees work from another jurisdiction

The Labour Code does not specifically provide for remote working of employees, or working from foreign jurisdictions, and thus nothing is said about any tax implications under such a situation. However, according to the Income Tax Law, income taxable in Rwanda includes the activities performed in Rwanda by any person and activities performed abroad by a resident of Rwanda, which include services and employment.



### Other trends

There have been recent changes in legislation such as the new Presidential Order on Contributions to Mandatory Pension Scheme. The pension contribution that was formally capped at 6% of the employee's remuneration in the previous law (where both the employee and the employer each contributed 3%) has been increased to 12% (where both the employee and the employer will now contribute 6% each). This rate is to increase by 2% every year from 2027 until 2030 (12% from 1 January 2025; 14% from 1 January 2027; 16% from 1 January 2028; 18% from 1 January 2029; and 20% from 1 January 2030).

## 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 (temporary) employment contracts (these workers may be engaged and paid on an hourly, daily, weekly, fortnight or monthly basis depending on the relevant hiring option);
- permanent (indefinite term) employment contracts;
- apprenticeship contracts; and
- internship contracts.

**Is there a concept of dual employment or deemed employment in Rwanda? In what instances would this apply?**
In Rwanda an employee is allowed to have more than one employment contract. Article 11 of the Labour Code states that employment contracts between an employee and more than one employer is acceptable on condition that such employment contracts do not compromise one another. The Labour Code is silent on what kind of compromise would be considered and the consequences if such employment contracts compromise one another.

With respect to deemed employment, the Labour Code defines an employment contract as an agreement between an

employer and an employee whereby the employee undertakes to work under the authority of the employer in return for remuneration. The concept of deemed employment is not common in Rwanda. As such, Rwandan labour law does not elaborate on this concept. However, Article 28 of the Labour Code states that if a fixed-term contract is not renewed in writing while the employee continues to work, the employee is remunerated based on the days worked. Article 11 of the Labour Code allows for an unwritten contract. However, an unwritten employment contract cannot run for more than 90 consecutive days. There are also circumstances in Rwanda where private employment agencies contract with employers to recruit employees for them, but the employment contract is normally entered into between the agency and the employee, although such an employee works for a "*third-party employer*". Although the above circumstances are not clearly considered by the Labour Code as deemed employment, for the purposes of this question, they can be interpreted as deemed employment.

## Immigration

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

Yes. Foreign employees require a resident permit to work in Rwanda. This permit will allow them to reside and work in Rwanda.

To hire a foreign worker, an employer must:

- verify whether the job is on the occupations in demand list (the occupations in demand list includes 20 job categories, such as managers, science and engineering professionals, life science professionals, health professionals, teaching professions, business administration professionals, etc.);
- verify whether the foreigner fulfils the requirements for the job;
- comply with immigration laws in relation to the residence permit; and
- recruit a foreigner whose licence is recognised by a regulatory professional body in Rwanda if the job has a regulatory professional body.

A registered investor who invests an equivalent of at least USD 250,000 may recruit three foreign employees without necessarily demonstrating that their skills are lacking or insufficient in the labour market in Rwanda.

When the employment contract with a foreigner is terminated, the employer must inform the immigration authorities in writing.

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 while outside Rwanda must apply for a work permit within 15 working days from the date of entry in Rwanda.

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

Ministerial Order No. 02/MIFOTRA/23 of 1 August 2023 provides a list of prohibited work for a child younger than 18 for both public and private service (Article 38) as well as a list of light work that a child aged between 13 and 15 may perform under the supervision of an adult (Article 39). This authorised light work cannot be performed by the child for more than six hours a day. Other limitations are related to employment of foreigners, as discussed above.

## CONDITIONS OF EMPLOYMENT

**Are contracts of employment required?**

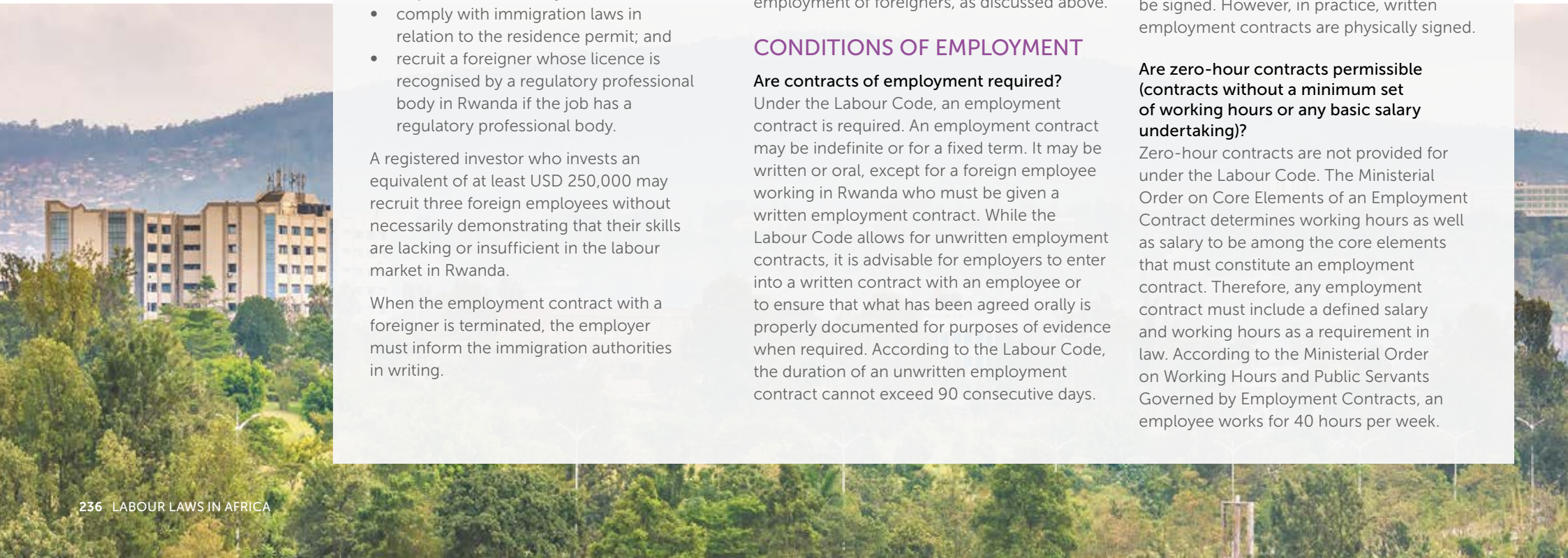
Under the Labour Code, an employment contract is required. An employment contract may be indefinite or for a fixed term. It may be written or oral, except for a foreign employee working in Rwanda who must be given a written employment contract. While the Labour Code allows for unwritten employment contracts, it is advisable for employers to enter into a written contract with an employee or to ensure that what has been agreed orally is properly documented for purposes of evidence when required. According to the Labour Code, the duration of an unwritten employment contract cannot exceed 90 consecutive days.

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

The Ministerial Order on Core Elements of an Employment Contract lists core elements that must be included in a written employment contract. This ministerial order further provides a list of additional core elements of an employment contract for an employee working abroad. The ministerial order requires that an employment contract must be in any of the official languages of Rwanda (Kinyarwanda, English or French) but if the employer and the employee do not understand the same language, the employment contract must be written in two languages (one understood by the employer and the other understood by the employee). Rwandan labour law is silent on whether and how a written contract should be signed. However, in practice, written employment contracts are physically signed.

**Are zero-hour contracts permissible (contracts without a minimum set of working hours or any basic salary undertaking)?**

Zero-hour contracts are not provided for under the Labour Code. The Ministerial Order on Core Elements of an Employment Contract determines working hours as well as salary to be among the core elements that must constitute an employment contract. Therefore, any employment contract must include a defined salary and working hours as a requirement in law. According to the Ministerial Order on Working Hours and Public Servants Governed by Employment Contracts, an employee works for 40 hours per week.



## Probation

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

Yes. Probation periods are permitted up to a maximum period of six months (three months that may be extended when necessary to six months). Probationary periods must also be stipulated in writing.

## Minimum employment rights

**Are any employees excluded from minimum employment rights?**

No. The Labour Code does not have any discriminatory provisions whereby any employee is excluded from minimum employment rights and no other labour legal tool does that under Rwandan law.

**Is there a minimum wage requirement?**

Not at present. However, the Labour Code defines a minimum wage and provides that an order of the minister in charge of labour determines minimum wage. Since such a ministerial order has not yet been made, there is currently no minimum wage requirement.

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

According to the Ministerial Order on Working Hours and Public Servants Governed by Employment Contracts, the weekly working time for both private employees and public servants is a maximum of 40 hours. For public servants the daily hours of work are eight hours from 08h00 to 13h00 and from 14h00 to 17h00 with a flexible hour from 08h00 to 09h00 of working remotely (for example, from home). The daily time for rest for public servants governed by the Labour Code is one hour from 13h00 to 14h00 with the flexibility to take such a break after 13h00 for work-related reasons. For public servants, the time from 15h00 to 17h00 every Friday is reserved for sports activities.

For the private sector, the Ministerial Order on Working Hours and Public Servants Governed by Employment Contracts states that standard work week is 40 hours. The employee has the right to a one-hour break, which is determined by the employer. The time for starting daily work is also determined by the employer, but if the work is started before 9h00, the employee has the right to one flexible hour from 8h00 to 9h00 to work remotely. An employee in the private service has a right to 24 hours of rest in a week.

**What are the minimum requirements relating to overtime?**

Overtime is permitted in Rwanda if it is performed at the employer's request in the case of urgent work, seasonal work, exceptional work, work done to increase productivity or work of a special nature. As these concepts are not defined, they are interpreted broadly. Hours worked are considered to be overtime if they are worked in excess of 40 hours per week or in excess of the weekly working hours laid down in the company's rules of procedure (work rules) or in the employment contract.

The employer must track overtime hours in a register and the employee must confirm these hours, either by signing the register or by affixing their fingerprint.

Rwandan law provides that an employee who works overtime is entitled to time off equal to the extra hours performed within a period not exceeding 30 days from the date they worked the overtime. If such time off is not provided within the 30 days, the employer should compensate for the same in terms of payment during the next month and include such payment on the payroll. This is mandatory by law and will apply even if it is not stated in the employment contract. There is no overtime pay in Rwanda, i.e. overtime paid at an increased hourly rate.

**What are the minimum requirements relating to annual leave?**

The statutory annual leave equals one and a half working days per month of work, i.e. 18 days per year. The parties can agree on provisions that are more favourable to employees. In addition, employees are entitled to one additional working day's paid leave for every three years of service with the same company, but the total annual statutory leave is 21 days. In principle, the annual leave must be taken and cannot be paid in lieu. An employee is entitled to such leave after one year of service (including the trial period). Leave must be requested in writing and must be taken by mutual agreement with the employer, depending on the needs of the company.

**TOTAL ANNUAL STATUTORY LEAVE IS 21 DAYS.**

**ZERO-HOUR CONTRACTS ARE NOT PROVIDED FOR UNDER THE LABOUR CODE.**

**What are the minimum requirements relating to sick leave?**
The Labour Code distinguishes between short-term and long-term sick leave. Short-term sick leave does not exceed 15 days and must be motivated for by a doctor. Long-term sick leave cannot exceed six months and must be confirmed by a medical committee composed of three doctors. The employee is entitled to their full salary during the first three months of leave. During the further three months, the employment contract will be suspended, and the sick employee will not be paid. If the employee remains sick after six months, the employer is entitled to terminate the employment contract, with a termination allowance ranging from two to seven months of salary, depending on the number of years with the company.

**What are the minimum requirements relating to parental leave, and does it apply to both parents or only mothers?**
A female employee who has given birth is entitled to maternity leave of at least 14 consecutive weeks, which includes two weeks that the employee can take before the birth. In the event of complications, she is entitled to additional paid leave of one month. Additional leave is granted to employees who give birth to a stillborn baby, whose child dies after birth or who gives birth to a premature baby. Since 2023, a male employee is entitled to a paternity leave of seven days after the birth of his child. In the event of complications, he is entitled to five extra working days.

**What are the minimum requirements relating to family responsibility leave (if any)?**
The employee is entitled/has a right to circumstantial leave for the following reasons: two working days in the case of their civil wedding; seven working days if their wife gives birth, five working days in case of complications and one month if their wife dies leaving an infant younger than three months old; seven working days in the case of death of their spouse; five working days in the case of death of their child; four working days in the case of death of their father, mother, father-in-law or mother-in-law; four working days in the case of death of their brother or sister; three working days in the case of death of their grandfather or grandmother; and three working days in the case of their transfer over a distance of more than 30 km from their usual place of work.

**Are employees automatically entitled to bonus payments?**
The Labour Code is silent on bonus payments. Therefore, there is no automatic entitlement, but the employer has discretion to make bonus payments. Although not mandatory, it is common practice to grant a thirteenth cheque to employees who performed well.

## Changing terms and conditions of employment

**Are employees automatically entitled to periodic increases, alternatively how do the parties normally achieve consensus on increases?**
Rwandan labour law does not say anything on periodic salary increments. As such, there is no automatic entitlement to periodic increments, but in practice such increments are agreed to in the employment contract if the employer allows the same in its internal policies.

**Can employment terms be changed without achieving agreement with the employees?**
The Labour Code states that an employment contract can be modified in the course of its execution at the request of either party and with mutual consent. Therefore, the employer and the employee must agree to any amendments to the terms of the employment contract. However, in practice, if the modification is in favour of the employee, for example increases to the employee's salary or other benefits, the employer simply informs the employee in writing without necessarily changing the employment contract.

**Are employees commonly represented in their interactions with employers relating to changes to employment terms?**
The Labour Code does not specifically address this aspect. However, in some cases employees can be represented by their respective trade unions or employees' representatives, and sometimes the employee may be represented by their lawyer if such interactions require negotiations.

## SOCIAL BENEFITS, TAX AND PENSIONS

### Workplace injuries

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

Yes. An employee who has an occupational accident or disease and whose employer has contributed to a social security body in Rwanda on their behalf, is entitled to compensation in accordance with the Health Insurance Schemes Law. If the employer did not make any contributions to the social security body at the time of the injury/accident, the employer must compensate the employee in the same way the social security body would have compensated the employee if the employer had fulfilled its obligations (Article 19 of the Labour Code).

### Return to work

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

Yes. According to the Labour Code, an employee cannot be dismissed as a result of an occupational accident unless a recognised doctor declares them unfit to resume service in the employment they held prior to the accident. If it appears that the employee is fit to work again, the employer should give them other work suitable for their level of ability. However, in the absence of such suitable work, the employment contract is terminated, and the employer must give the employee the benefits provided by 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?**

Yes. According to Article 3 of the Health Insurance Schemes Law, health insurance is mandatory and any person, whether a Rwandan or a foreign national who is in Rwandan territory is required to have health insurance. As such, any person entering Rwandan territory without any other form of insurance must subscribe to insurance with an insurance regime of their choice within 30 days of their arrival. The Health Insurance Schemes Law requires employers, whether public or private, to contribute to the payment of their employees' health insurance contributions in a recognised insurance scheme satisfying conditions required by law, and such employer shall furnish proof of having subscribed to insurance for its employees. This means that health insurance is mandatory, but the employer remains at liberty to choose the insurance service provider.

Article 10 of the Health Insurance Schemes Law provides that contributions should be shared between the employer and the employee, but the employer may choose to pay the full amount of contributions and has the responsibility to report and pay employee contributions and prove payment thereof, indicating the employer's and employee's share.

### 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. The employer has an obligation to collect and declare taxes on behalf of the employee. The tax rates are applied as below:

- RWF 0 – 60,000: 0%
- RWF 60,001 – 100,000: 10%
- RWF 100,001 – 200,000: 20%
- RWF 200,001 and above: 30% (maximum)

**Do employees who work remotely from a foreign jurisdiction and pay taxes in their country of residence, require a Rwandan work permit to render services to a Rwandan entity?**

No. Employers who work for a Rwandan entity remotely (sitting in a foreign country) are not required to have a Rwandan work permit to render such services to the Rwandan entity remotely since they do not reside in Rwanda.

## Other social benefits

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

The RSSB is the country's pension scheme. All salaried workers contribute towards this scheme. Employers contribute 6% of the employee's gross salary towards the scheme. The employee also contributes 6% towards the scheme.

The Prime Minister's Order on CBHIS requires employees, including public service and private sector employees, to contribute to the Community Based Health Insurance Scheme.

The contribution of a state employee and the contribution of a private sector employee is 0.5% of the net salary of the employee. The employer withholds the contribution and remits it to the CBHIS.

Declaration and payment of an employee's contribution needs to be done every month. The employer submits to the public entity in charge of community-based health insurance a list of employees and their salaries and pays the collected contributions not later than the fifteenth day of the following month. An employer that does not pay employees' contributions is held responsible for payment of arrears and penalties relating thereto.

The employer also deducts personal income tax (PAYE) from the employee's salary (the rates of which are outlined above) and pays it to the Rwanda Revenue Authority. Contributions must also be made to the Social Security Board for maternity leave benefits to the value of 0.6% of an employee's salary, with the employer and the employee each contributing 0.3%.

## DATA PRIVACY

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

Under the Data Protection Law, employers (data processors or data controllers), like any other data processors or data controllers are required to first obtain consent from a data subject (an employee) prior to the processing, use or transfer to a third party of their data. Employers are also required to ensure the security of the personal data of their employees and to put measures in place to make sure such personal data is secure. This includes identifying foreseeable risks to personal data under that person's possession or control; establishing and maintaining appropriate safeguards against those risks; regularly verifying whether the personal data security safeguards are effectively implemented; and ensuring that the safeguards are continually updated in response to new risks or any identified deficiencies.

## BUSINESS TRANSFERS

**Are employees automatically transferred to a new employer in the event of transfer of a business as a going concern?**
Yes. Although the Labour Code provides that an employment contract cannot be transferred from one employer to another employer without the employee's consent, in the event of transfer of business as a going concern, a contract of employment is normally transferable from the employer that transfers the business to the employer to whom the business is transferred. A transfer of business therefore does not interrupt the employees' continuity of service, and their work continues automatically with the new employer as if the latter was 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?**
There is no formal consultation or information process as they exist in other jurisdictions. However, employees' representatives must be informed about key developments in the organisation/enterprise as long as such disclosure does not prejudice the business of the enterprise. Therefore, employees' representatives must be informed about any potential transfer of the employer's business. Where such a transfer is likely to lead to layoffs, the competent labour inspector must also be informed. It is also prudent for the employer to keep the employees informed of such a transfer process, although the Labour Code explicitly require this.

**Joint and several liability for employers?**
The Labour Code is silent on the joint and several liability of employers.

**Is it possible to change terms and conditions of employment in the context of a business transfer?**
Yes. However, the employee's consent is required.

**What are the consequences in the event of non-compliance?**
The Labour Code does not elaborate on the consequences of non-compliance with the law in respect of a transfer of business, but in practice the aggrieved employee may refer the matter to court and the employer may be ordered to pay damages where the employees can prove a fault, a damage and a causal link.

## TERMINATION OF EMPLOYMENT

**What are the statutory obligations and procedures for terminating a contract of employment?**
Termination of employment contracts must be based on legitimate reasons. These legitimate reasons for termination are not expressly defined in the Labour Code except for termination for economic or technical reasons and termination due to gross misconduct. However, the causes for terminating an employment contract should always be determined in the employment contract or by the employer's relevant policies. The employer must abide by the employment contract and the company policies to ensure the cause of termination is legitimate.

The employer must observe the notice period in accordance with the Labour Code.

### Termination for misconduct

**What fair process requirements exist?**
Termination of an employment contract (including termination for misconduct) requires a termination notice – apart from termination for gross misconduct, where a termination notice is not required. Besides the termination notice, the employer must also ensure the employee receives what is legally required. The employer must issue the employee with a certificate of rendered service within 15 days if the employee requests one. In the event that the termination notice is not provided to the employee, they should receive compensation indemnity. In a nutshell both the reasons for termination and the termination procedure should be legitimate to avoid damages for abusive dismissal.

**What substantive fairness requirements exist?**
The Labour Code does not explicitly outline substantive fairness requirements. However, it provides for the procedure for termination of employment contracts.

**What notice periods are applicable?**
The employee is entitled to 15 days if they have worked for the employer for less than 12 months, and 30 days if they have worked for the employer for more than 12 months. However, an employer can dismiss an employee without notice for gross misconduct. Where there is gross misconduct, no notice will be due, and the employer must inform the employee of the evidence of the gross misconduct within 48 hours and provide the grounds for termination.

**Are any termination benefits payable in the event of a dismissal for misconduct?**
There are no termination benefits payable in the event of a dismissal for gross misconduct. In the event of misconduct that is not a gross misconduct, the notice periods referred to above will apply.

**What are the dispute resolution mechanisms?**
In the event of a dispute, employees will first attempt to settle the matter with the employer. If this does not succeed, the employee must refer the matter to the labour inspector to seek an amicable settlement. If the dispute is not resolved before the labour inspector, the dispute may be brought before the labour chamber of the Rwandan intermediate courts.

**What remedies are available to employees?**
Any unfair termination of an employment 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 may go up to nine months' worth of salary of the employee.

**Is third-party approval for termination/ termination documents required?**
Rwandan law does not require any third-party approval prior to termination of an employment contract.

## Termination for incapacity

**What fair process and substantive fairness requirements exist?**
There are no explicit provisions under the Labour Code providing a specific process to terminate employment contracts for incapacity. However, these may be determined in the company's rules of procedure, collective bargaining agreements or directly in employment contracts.

**What notice periods are applicable?**
There is no specific regime applicable in cases of incapacity. Therefore, the same notice periods referred to above will apply (at least 15 days for an employee with less than 12 months of service; or at least 30 days for an employee with more than 12 months of service).

The notice must be given in writing and state the reasons for the termination. Notice cannot be given: during the probation period; if the employment contract is suspended; or if the employee is on leave. During the notice period, the employer and the employee remain bound by all their contractual obligations. During the same period, the employee is entitled to one paid day off per week to find a new position.

**Are any termination benefits payable in the event of a dismissal for incapacity?**
Yes. The benefits for termination of an employment contract for economic or technical reasons or for reasons of sickness will also apply to termination of an employment contract for reasons of incapacity. These are:

- two times the average monthly salary for the worker with less than five years of working experience in the same enterprise;
- three times the average monthly salary for the worker with working experience of between five and 10 years in the same enterprise;
- four times the average monthly salary for the worker with working experience of between 10 and 15 years in the same enterprise;
- five times the average monthly salary for the worker with working experience of between 15 and 20 years in the same enterprise;
- six times the average monthly salary for the worker working experience of between 20 and 25 years in the same institution; and
- seven times the average monthly salary for the worker with working experience of over 25 years in the same enterprise.

**What are the dispute resolution mechanisms?**
The matter can be referred to the labour inspector for amicable settlement if the worker's delegate fails to settle the matter with the employer. If the labour inspector cannot reach settlement, the matter can be referred to the labour chamber of the Rwandan intermediate courts.

**What remedies are available to employees?**
Any unfair termination of an employment 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 may go up to nine months' worth of salary of the employee.

**Is it permissible to offer employees a voluntary separation package during a redundancy process? Does this undermine the legitimacy of the retrenchment/ redundancy process?**
The term redundancy is not used under the Labour Code. However, termination of an employment contract due to economic or technical reasons is recognised. Therefore, the termination benefits applicable to termination of an employment contract due to economic or technical reasons are as follows:

- two times the average monthly salary for the worker with less than five years of working experience in the same enterprise;
- three times the average monthly salary for the worker with working experience of between five and 10 years in the same enterprise;
- four times the average monthly salary for the worker with working experience of between 10 and 15 years in the same enterprise;
- five times the average monthly salary for the worker with working experience of between 15 and 20 years in the same enterprise;
- six times the average monthly salary for the worker working experience of between 20 and 25 years in the same institution; and
- seven times the average monthly salary for the worker with working experience of over 25 years in the same enterprise.

**THE NOTICE PERIOD IS 15 DAYS FOR AN EMPLOYEE WHO HAS WORKED FOR THE EMPLOYER FOR LESS THAN 12 MONTHS AND 30 DAYS.**

However, in the case of an amicable separation agreement between the employer and the employee (voluntary separation), the parties may agree on a separation package and that will not undermine the legitimacy of the retrenchment/redundancy process.

**Is third party approval for termination/ termination documents required?**
The Labour Code does not require any approval to be provided prior to termination of an employment contract.

**What are the dispute resolution mechanisms?**
If a dispute arises between an employer and employee, the employee's representative can try to settle the dispute amicably. If the employee's representatives fails to do so, the dispute can be referred to the labour inspector of the area where the enterprise is located. If the labour inspector fails to settle the matter amicably due to the nature of the case, they may refer it to a labour inspector at the national level indicating the reasons for referral. If settlement of the dispute by the labour inspector at the national level fails, the matter is referred to the labour chamber of the Rwandan intermediate courts.

**What are the employee remedies?**
If the employee completed a period of at least 12 months of employment, the employee shall be entitled to the following:

- two times the average monthly salary for the worker with less than five years of working experience in the same enterprise;
- three times the average monthly salary for the worker with working experience of between five and 10 years in the same enterprise.
- four times the average monthly salary for the worker with working experience of between 10 and 15 years in the same enterprise.
- five times the average monthly salary for the worker with working experience of between 15 and 20 years in the same enterprise.
- six times the average monthly salary for the worker working experience of between 20 and 25 years in the same institution; and
- seven times the average monthly salary for the worker with working experience of over 25 years in the same enterprise.

**Third party approval for termination/ termination documents?**
The Labour Code only requires the employer to inform the labour inspector but does not require any approval from the inspector. No third-party approval is required for an employment contract or related documents.

**What notice periods are applicable?**
The notice period is 15 days for an employee who has worked for the employer for less than 12 months and 30 days for an employee who has worked for the employer for more than 12 months.

## Termination benefits

**Are any termination benefits payable in the event of a dismissal for misconduct?**
There are no termination benefits payable in the event of a dismissal for misconduct, however, the employee is entitled to payment *in lieu* of notice (if a termination notice is not provided) and any accrued salary or benefits.

**Are any termination benefits payable in the event of a dismissal for incapacity?**
It is not expressly provided in the Labour Code that an employee who is dismissed as result of incapacity is entitled to terminal benefits. However, the Labour Code entitles an employee to terminal benefits if they have been dismissed from work as a result of long sickness exceeding six months and are unable to resume work (Article 31(5) of the Labour Code). The value of the of terminal benefits depends on the number of years the employee has been in the service of the employer.

**Are any termination benefits payable in the event of a dismissal for operational requirements?**
Yes. The Labour Code provides for dismissal in case of organisational restructuring, in which event the dismissed employees are entitled to terminal benefits. The terminal benefits vary from one employee to another depending on the number of years they have been with the employer.

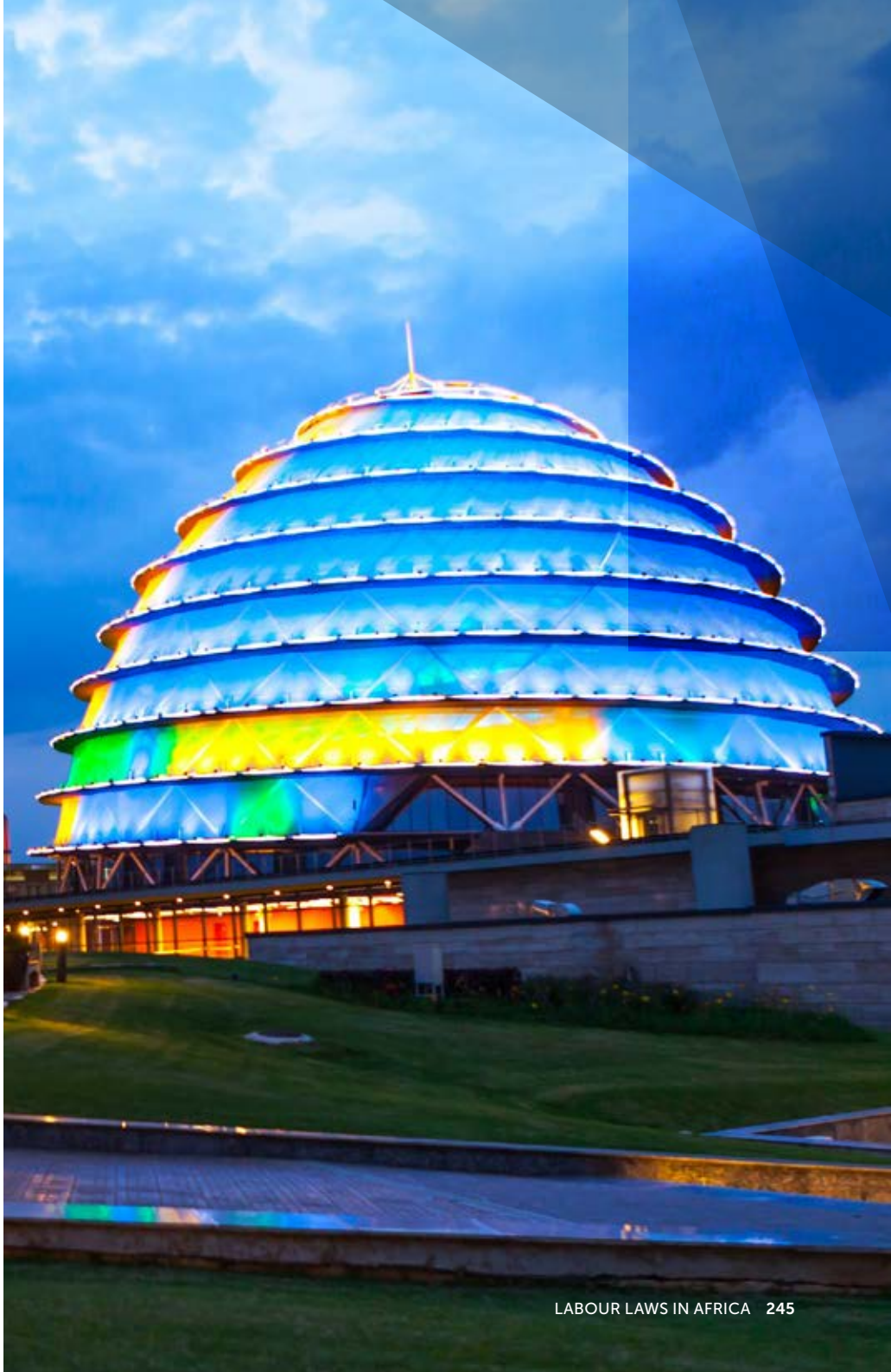
**How is severance pay calculated?**
Severance calculations would be

- two times the average monthly salary for the worker with less than five years of working experience in the same enterprise;
- three times the average monthly salary for the worker with working experience of between five and 10 years in the same enterprise;
- four times the average monthly salary for the worker with working experience of between 10 and 15 years in the same enterprise;
- five times the average monthly salary for the worker with working experience of between 15 and 20 years in the same enterprise;
- six times the average monthly salary for the worker working experience of between 20 and 25 years in the same institution; and
- seven times the average monthly salary for the worker with working experience of over 25 years in the same enterprise.

**Are any termination benefits payable in the event of voluntary resignation by an employee?**
This is not explicitly provided for in the Labour Code. However, an employer is at liberty to provide for terminal benefits in the employment contract or its company policies.

**Are any termination benefits payable in the event of retirement?**
Similar to the terminal benefits described above, a retiring employee receives retirement benefits which are calculated based on the time the employee has spent working for the employer. There are as follows:

- two times the average monthly salary for the worker with less than five years of working experience in the same enterprise;
- three times the average monthly salary for the worker with working experience of between five and 10 years in the same enterprise;
- four times the average monthly salary for the worker with working experience of between 10 and 15 years in the same enterprise;
- five times the average monthly salary for the worker with working experience of between 15 and 20 years in the same enterprise;
- six times the average monthly salary for the worker working experience of between 20 and 25 years in the same institution; and
- seven times the average monthly salary for the worker with working experience of over 25 years in the same enterprise.



## RETIREMENT

**What is the normal retirement age?**

The minimum pensionable age in Rwanda is 60. A retiring employee shall benefit from an allowance which is calculated in the same manner determined by the RSSB. 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?**

Although there are no provisions regarding non-compete clauses in Rwandan labour law, the general principles of civil and contract law apply. Therefore, it is possible to restrict a worker from working for competitors after the termination of employment. As such, employers are at liberty to include non-compete clauses in the employment contracts and such clauses are valid on the basis of contract law principles and are binding between the employer and the employee.

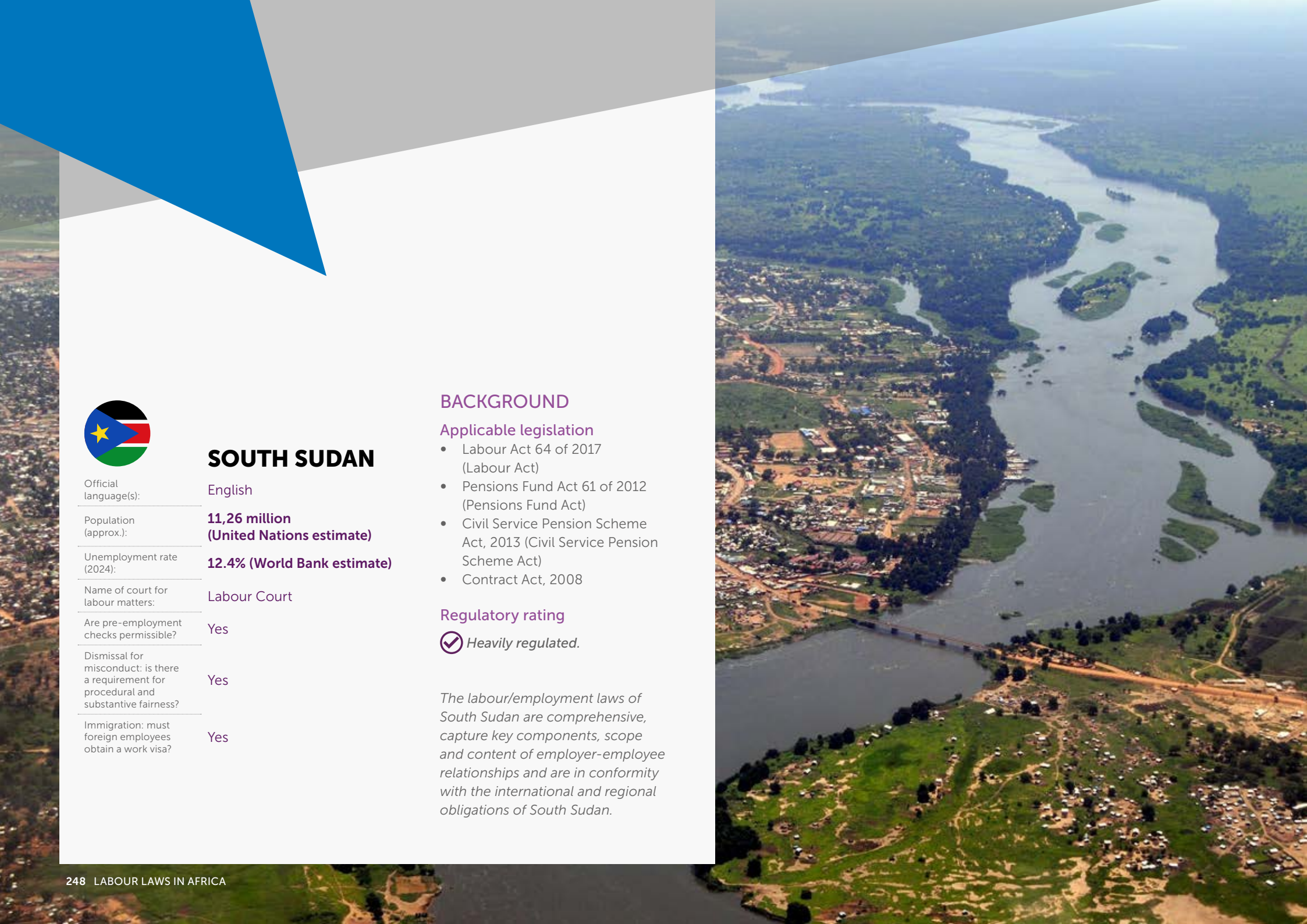
In the absence of statutory restrictions or requirements, the employer and the employee should agree on all relevant aspects in the employment contract.

### Confidentiality and trade secrets

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

Nothing is provided under the Labour Code. Therefore, the general principles of civil and contract law apply. Employers customarily include such confidentiality and non-disclosure clauses in employment contracts, and the wording normally includes keeping such information the employee obtained during their work within the enterprise confidential for a certain number of years following termination of the employment contract. Such clauses are valid on the basis of contract law principles and are binding between the employer and the employee.

**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.**





# SOUTH SUDAN

| | |
|---|---|
| Official language(s): | English |
| Population (approx.): | **11,26 million (United Nations estimate)** |
| Unemployment rate (2024): | **12.4% (World Bank estimate)** |
| 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 64 of 2017 (Labour Act)
- Pensions Fund Act 61 of 2012 (Pensions Fund Act)
- Civil Service Pension Scheme Act, 2013 (Civil Service Pension Scheme Act)
- Contract Act, 2008

### Regulatory rating

*Heavily regulated.*

*The labour/employment laws of South Sudan are comprehensive, capture key components, scope and content of employer-employee relationships and are in conformity with the international and regional obligations of South Sudan.*

**Wani Mathias Jumi**
Partner

# CASE ADVOCATES, LLP

Established in 2013, CASE ADVOCATES, LLP has established itself as a firm that meets the clients' legal challenges of the 21st Century. Its lawyers are trained and routinely nurtured to the fulfilment of its vision by applying policies toward the goals. We emphasise ethical practice and accountability of service to the clients. We address clients' complaints swiftly in a fair manner.

The Firm's areas of practice are Appellate and Trial practice, Employment law, Banking and Financial laws, Fraud and Internal Investigations, Mergers & Acquisitions, Criminal and Civil Litigation, Commercial practice, Constitutional Law and Constitutional litigation, Disability law and Human Rights, Family Law, Immigration Law, National Security Law, Military Law & Procedure, Counterterrorism & the Law, Property Law, Oil & Gas, Sports & the Law, Post-Conflict Reconstruction, Arbitration, Medical Malpractice, Intellectual Property, Complex Contracting, Insurance Law, Legal Training and Research.

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## HIRING DECISIONS

### Pre-hire checks

**Can employers conduct pre-employment checks?**
Yes. In terms of section 116 of the Labour Act, the Minister of Labour may require applicants for hazardous or night work to undergo medical examinations at the employer's expense.

Section 116 (4) (a) and (b) further provides an exception for an employer not conducting pregnancy tests before employing a female candidate. The section allows pre-employment checks where the job is prohibited for a pregnant woman by law or the woman is subjected to other risks associated with the role.

### Hiring options

**What hiring options are available to employers?**
Section 42 (1) of the Labour Act provides that an employment contract may be oral or written. Employment contracts are categorised as follows:

- 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. However, in accordance with section 46 of the Labour Act, foreign employees must 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.

Employers are required to adhere to the provisions of the Labour Act while hiring employees. Employers are required to be non-discriminatory to applicants or employees under section 6(1) and to adhere to the age requirement under section 12. Employers must ensure new hires are aware of and understand safety standards applicable to their roles to maintain a safe working environment.

**PRESENTLY, SOUTH SUDAN DOES NOT HAVE A STATUTORY MINIMUM WAGE.**

## CONDITIONS OF EMPLOYMENT

**Are there any formal requirements for employment contracts?**
Yes. Any contract that exceeds three months shall be reduced to writing by the employer. There must be three signed copies of the contract. Each party must retain a copy and the third copy must be filed with the Commission for Conciliation, Mediation and Arbitration. A contract of employment must contain the rights 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 act shall be deemed to be the terms and conditions of the contract of employment.

An employer may not enforce its 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 their entitlement by means of any kind of evidence.

### Probation

**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 months. The probation period may not be extended. Contracts that 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. Section 42 of the Labour Act provides that 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 years and may only be renewed once within the same enterprise. The renewal period shall be considered to be continuous with the previous period of service. In the event that a worker continues in service after the duration of the period of renewal, they shall be deemed to be contracting for an indefinite period.

### Minimum employment rights

**Are any employees excluded from minimum employment rights?**
According to section 4, 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. However, section 50 (1) of the Labour Act provides that the Council may recommend to the competent authority the review, adjustment and fixing of the minimum wage/salary.

**BONUS PAYMENTS**
**ARE MADE AT THE DISCRETION OF THE EMPLOYER.**

**What are the maximum working hours?**
According to section 56 of the Labour Act, the normal working hours of an employee may not exceed 40 hours per week, or eight hours per day. An employer may require an employee to work not more than nine hours for one or more days per week, provided that the employee's working hours will be proportionately reduced on another day, such that an employee's working hours do not exceed more than 40 hours a week. The normal working hours of an employee engaged in shift work shall not exceed 40 hours when averaged over a three-week period. In addition, an employee who works for a continuous period of five hours is entitled to a one 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?**
According to section 57 of the Labour Act, an employer may agree with an employee to work not more than three hours of overtime in a day or 10 hours of 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 twice 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 positions and where an employee has been granted leave *in lieu* of remuneration for overtime.

**What the weekly rest and public holidays requirements?**
According to section 59 of the Labour Act, an employee shall be entitled to a weekend rest period of not less than 24 consecutive hours. Weekly rest days are to be taken on such days as is customary or as agreed between the parties.

According to section 61, employees are entitled to paid leave on all public holidays. An employee who is required to work on a public holiday shall be entitled to twice their regular hourly rate for all time worked on the public holiday or one day's paid leave by way of compensation.

**What are the minimum requirements relating to annual leave?**
Section 60 of the Labour Act provides that an employee who has completed one year of continuous service with the same employer shall be entitled to annual leave on the following basis:

- for one to three years of continuous years, 21 days;
- for three to five continuous years of service, 25 days; and
- for 15 or more continuous years of service, 30 days.

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 years' untaken annual leave, they may enter into a written agreement with the employer to accept financial compensation for half of the untaken annual leave entitlement.

An employee shall receive financial compensation for any annual leave not taken by or paid out to them upon termination of employment, irrespective of the cause of such termination.

**What are the minimum requirements relating to sick leave?**
An employee is entitled to 12 days of 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 90 days of maternity leave with full pay; and 45 days for breastfeeding while working for half a day. Section 64(2) provides that the 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 weeks of maternity leave.

Section 65 also provides that male employees are entitled to two weeks of paternity leave on full pay, to be taken within three days of the birth of a child or immediately after a miscarriage.

**What are the minimum requirements relating to family responsibility leave?**
In accordance with section 66, an employee with at least three months' continuous service and who works for more than four days a week is entitled to three days of paid compassionate leave per annum. Compassionate leave may be exercised in the event of the death of a family member or illness of or injury to their child or spouse. Compassionate leave does not accumulate from one year to another.

**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 to or less favourable than the minimum conditions provided for in law.

**Are employees commonly represented in their interactions with employers relating to changes to employment terms?**
Yes. However, it depends on the employee's interest and whether they can afford legal representation. In practice, where the parties fail to reach a conclusion, a matter is referred to the national Ministry of Labour, parties are usually heard without any legal representatives unless the situation warrants otherwise.

**THE ACTIONS OF AN EMPLOYEE THAT WOULD CONSTITUTE GROSS MISCONDUCT ARE OUTLINED IN SECTION 76 OF THE LABOUR ACT.**

## TERMINATION OF EMPLOYMENT

According to section 73 (1) of the Labour Act, 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; 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 for 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 year or more, one month's notice to the other party;
- after continuous service by the employee for six months or more, but less than one year, two weeks' notice to the other party; or
- after continuous service by the employee for less than six months, one week's notice to the other party.

Parties may agree to longer notice periods or payments *in lieu* of notice, or an employer may waive its 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.

**Can an employee be dismissed for incapacity?**
South Sudan recognises incapacity both in the form of physical incapacity as a result of illness or injury and in 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, the employer may dismiss an employee for unsatisfactory performance, provided the employer has:

- notified the 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 employee's 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?**
In accordance with section 83, where termination disputes arise, they must be referred to the Commission for Conciliation, Mediation and Arbitration. If a 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). 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 Labour of the intended termination together with all the relevant information no less than two 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 workplace representatives of the said union not less than 30 days prior to the intended termination on 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 year or more, shall be entitled to receive, *inter alia*, severance pay equal to two weeks' wages/salaries for each completed year of continuous service with the employer. Further, section 81 provides for a gratuity payment to all employees who have served for more than one year 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?**
Where the dismissal is deemed to be unfair, the employee is entitled to the remedies set out in section 85 of the Labour Act.

**Third party approval for termination/termination documents?**
The employer must notify the Ministry of Labour at least two 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.

### 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 workplace 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.

**IN TERMS OF SECTION 51 OF THE LABOUR ACT, INCOME TAX IS TO BE DEDUCTED FROM THE WAGES/SALARY OF AN EMPLOYEE.**

## 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, during the selection, hiring or termination of an employee's contract of employment, an employer may not collect personal data that is irrelevant to the inherent requirements to the position; 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 for by law; or 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.

Unless agreed to otherwise between the transferee and transferor in writing, if a trade or business is transferred in whole or in part, all employment contracts in force on the date of such transfer shall automatically be deemed to be transferred to the transferee with all rights and obligations contained in such contracts and to continue as if concluded between an employee and the transferee.

**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.

**RESTRAINT OF TRADE AGREEMENTS**
**ARE NOT ADEQUATELY PROVIDED FOR IN LAW.**

## RETIREMENT

**What is the normal retirement age?**
In order for an employee to access their full pension, they must have turned 60 and have had at least 20 years of service with one or more employers.

The law, including the Pensions Fund Act, is not clear on the retirement age in South Sudan. However, the Civil Service Pension Scheme Act provides for 60 and 61 as the retirement age, which is ambiguous in nature.

**Are any termination benefits payable in the event of retirement?**
An old age pension received in terms of the Pensions Fund Act. Employees are also entitled to gratuity in terms of section 81 of the 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.

Section 29 of the Contract Act, 2008 provides that an agreement is not a contract if its terms are indefinite or incomplete, except where there is a reasonably certain basis by reference to methods agreed by the parties or prescribed by law or custom upon which court can resolve the uncertainties and considered omission. This therefore means that a non-compete can be considered and the provisions can be enforced by the court looking into methods agreed upon by the parties or prescribed by law or custom to resolve issues and determine the intent of the parties.

Section 60 of the act provides that an agreement which restrains a person from exercising a lawful profession, trade or business of any kind shall be void, unless the restraint is reasonable in respect of the interests of the parties concerned and in respect of the interests of the public.

### Confidentiality and trade secrets

**What protections are offered to employers in respect of their confident 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 they have breached an obligation to protect and keep secure confidential information of the employer, unless such breach has been obliged by law, caused by the employer or to protect public interests. Where an employee has breached their obligation of confidentiality, an employer may summarily dismiss the employee.

Section 36 of the Pensions Fund Act further stipulates that the fund may not share personal information collected for pensionable employees, pensioners or survivors or applicants with any organisation or authority except as necessary for verification of application data, investigation of fraud and corruption, furnishing information required by public institutions for tax collection according to applicable laws and verification of eligibility for grants, subsidies, payment or benefits in kind. The fund shall be liable for any breach of the non-disclosure of personal information under applicable law.

# TANZANIA

| | |
|---|---|
| Official language(s): | Swahili, English |
| Population (approx.) (2023): | **66.6 million** |
| Unemployment rate (2024): | **1.6%** |
| Name of court for labour matters: | High Court of Tanzania Labour 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 – foreigners are required to apply for both residence and work permits (valid for two years and can be renewed for up to five years) or a business visa (valid for three months) for a short-term assignment |

## BACKGROUND

### Applicable legislation

- Employment and Labour Relations Act, Cap. 366 R.E. 2019 (ELRA)
- National Employment Promotion Services Act 5 of 1999
- Constitution of the United Republic of Tanzania, 1977 as amended from time to time
- The Employment and Labour relations (Code of Good Practice) Rules, 2007
- The Non-Citizen (Employment Regulation) Act, 2015
- Public Holidays Act, Cap. 35 (amended by the Written Laws (Miscellaneous Amendments) (Act 3 of 2023) Act, 2002
- Immigration Act, Cap. 54 R.E. 2016 and its Regulations of 1997 together with the Immigration (Amendment) Regulations, 2016
- Law of Contract Act, Cap. 345 R.E. 2019
- Labour Institutions Act, Cap. 300 R.E. 2019
- National Social Security Fund Act, Cap. 50 R.E. 2018 (amended by the Social Security Laws (Amendments) Act 9 of 2024)
- Occupational Health and Safety Act 5 of 2003 (OHSA)
- Workers' Compensation Act 20 of 2008
- Income Tax Act, Cap. 332 R.E. 2019 (Income Tax Act)
- Personal Data Protection Act, Cap. 44 of 2023 (PDPA)

### Regulatory rating

*Heavily regulated.*

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**Thomas Sipemba**
Partner

Our employment and labour law practice is at the forefront of workplace legal issues, advising on disputes, compliance, and employee benefits. We support employers across industries while understanding employee rights, ensuring swift and practical solutions. With a client-first approach, we are committed to exceeding expectations and delivering exceptional legal services.

**Contact:** thomas.sipemba@dentons.co.tz

## TRENDS

### General

*Digital transformation*

There is a growing emphasis on digital transformation, with increased adoption of technology in various sectors, including finance, healthcare and education. Mobile money services are particularly popular, providing financial inclusion to many. So far the Tanzania Government has digitalised its services. For example, the Tanzania Revenue Authority, where assessment and tax payments are done digitally, and also judiciary, where all filings are now being done online.

*Economic growth*

Tanzania has been experiencing steady economic growth, driven by sectors such as agriculture, mining and tourism. The Government has been investing in infrastructure projects to support this growth. GDP growth in Tanzania for the year 2024 to the third quarter was estimated to grow to 5.6% compared to the 5% recorded in 2023.

*Environmental conservation*

Tanzania is focusing on environmental conservation, particularly protecting its wildlife and natural resources. This includes efforts to combat poaching and promote sustainable tourism.

*Healthcare improvements*

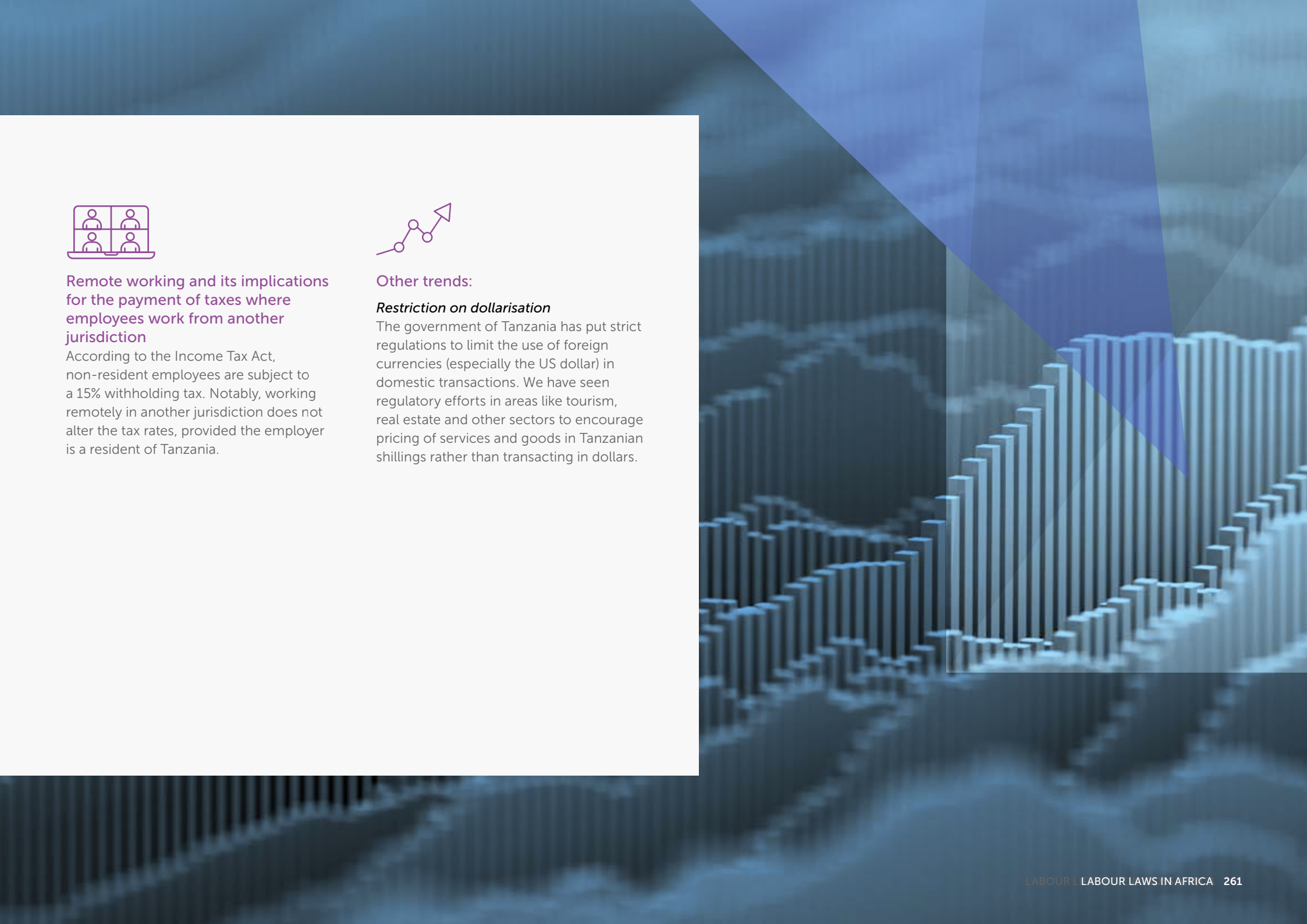
Efforts are being made to improve healthcare services, including initiatives to enhance access to medical facilities and address public health challenges.

### The introduction of artificial intelligence in the workplace

Artificial intelligence (AI) is steadily evolving across various sectors, with telecommunications, health, agriculture and finance leading the way. In workplaces, AI facilitates efficiency and enhances productivity. However, the lack of clear regulatory frameworks to govern its use raises concerns about data privacy, ethical practices and potential misuse of AI technologies. The introduction of AI in workplaces has also sparked concerns about job displacement. While AI can assist and enhance human capabilities, it is possible that in some areas, it may lead to the displacement of employees.

### Data protection and privacy

Tanzania has stringent data protection and privacy regulations. In 2022, Parliament enacted the PDPA and its accompanying regulations to safeguard personal data privacy rights. The act mandates that any person or organisation collecting personal data must register as either a data controller or a data processor. Additionally, any data collected within Tanzania cannot be transferred outside the country without obtaining a permit from the Personal Data Protection Commission.



## Remote working and its implications for the payment of taxes where employees work from another jurisdiction

According to the Income Tax Act, non-resident employees are subject to a 15% withholding tax. Notably, working remotely in another jurisdiction does not alter the tax rates, provided the employer is a resident of Tanzania.

## Other trends:

*Restriction on dollarisation*

The government of Tanzania has put strict regulations to limit the use of foreign currencies (especially the US dollar) in domestic transactions. We have seen regulatory efforts in areas like tourism, real estate and other sectors to encourage pricing of services and goods in Tanzanian shillings rather than transacting in dollars.

## HIRING DECISIONS

### Pre-hire checks

**May employers conduct pre-hire checks?**
Employers are permitted to conduct pre-employment checks, including identity checks and residential checks. An employer may also conduct a check on a potential employee's employment history, and this may also include restrictive covenants that may have been imposed on the employee from their previous employer(s), verification of education and professional qualifications, 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 section 14 of the ELRA. 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 co-ordinating, providing and monitoring cross-border placement services of employees.

**Is there a concept of dual employment or deemed employment in Tanzania? In what instances would this apply?**
Yes. In Tanzania there is a concept of dual employment and deemed employment. For dual employment – where a person has more than one job – the Income Tax Act has provided for how a person with primary and secondary employment will be taxed for income tax purposes. The tax system in Tanzania also requires every employee to be registered with a tax identification number for the purpose of collecting taxes, and where an employee has more than one job, they are required to categorise the employments as either primary or secondary. For deemed employment – under the Labour Institutions Act, a person who works for or renders services to any other person – is presumed, until the contrary is proved, to be an employee, regardless of the form of contract. The law has also stipulated factors which must be present to deem a particular engagement as employment. These include (i) where a person works under the direction or control of another; (ii) hours of work are determined by another person; (iii) if a person is working for an organisation, or is part of that organisation; (iv) the person has worked for that other person for an average of at least 45 hours per month over the last three months; (v) the person is economically dependent on the other person for whom that person works or renders services; (vi) the person is provided with tools of trade or work equipment by the other person; and (vii) the person only works for or renders services to one person.

### 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 business visa that is valid for a period of three months.
- A work and residence permit which is granted for a period of two years from date of issue, with renewals available. For this permit, the employer must provide the contract of employment, job description, CV and other relevant documentation.

If a foreign employee has not been granted a work 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 are limitations to the employment of foreign labour. These limitations include that the foreign employee must possess skills that the local employees do not possess; the foreign employee must obtain a work and residence permit prior to commencing work; and the employer must have a well-known physical address and be duly registered by the relevant authorities in Tanzania.

**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.

**THE HIRING OPTIONS AVAILABLE TO EMPLOYERS ARE GOVERNED BY SECTION 14 OF THE ELRA.**

In Tanzania affirmative action is not regarded as discrimination. Section 5 of the ELRA clearly states that employers may not employ children under the age of 14 except where the employment is for light work and will not restrict the child's school attendance or endanger their health, and prohibitions and conditions may be placed on employment of children under the age of 18.

## CONDITIONS OF EMPLOYMENT

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

Contracts of employment are required for all employees in Tanzania as the definition of employee in the section 4 of the ELRA 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 ELRA provides that the particulars of the employment relationship must be in writing. Further, section 14(2) provides that the employment contract must be in writing if the employee is going to work outside of Tanzania.

Document retention obligations do exist. Employers must keep the documents for a period of five years after termination of employment.

**ANY EMPLOYEE TAKING SICK LEAVE NEEDS TO GET A CERTIFICATE FROM A MEDICAL PRACTITIONER.**

**Are zero-hour contracts permissible (contracts without a minimum set of working hours or any basic salary undertaking)?**
Zero-hour contracts are not allowed in Tanzania. The employment laws in Tanzania emphasise providing reasonable working conditions for all employees, including regulated working hours. This ensures that employees have a stable and predictable work schedule, which is crucial for their well-being and financial security. The laws are designed to protect workers' rights and promote fair labour practices across the country.

## 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?**
Rule 10(4) of the Employment and Labour Relations (Code of Good Practice) Rules stipulates that the probation period must be of a reasonable length, not exceeding 12 months. This provision ensures that employees are given a fair and adequate period to demonstrate their capabilities while also protecting their rights to reasonable working conditions.

## Minimum employment rights

**Are any employees excluded from minimum employment rights?**
Yes. Employees from the following institutions are excluded from minimum employment rights:

- The Tanzanian Peoples Defence Force
- The police force
- The prison service
- The National Service

Seafarers may also be excluded from certain labour provisions as they are governed by Merchant Shipping Act 21 of 2003.

**Is there a minimum wage requirement?**
Yes. There is a minimum wage requirement in terms of the ELRA. 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. When an employee works overtime, section 19(5) of the ELRA 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, 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 of 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 for 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 not obliged to working during annual leave. However, where an employee has consented to work during annual leave the ELRA requires the employer to pay the employee one month's salary *in lieu* of annual leave. The ELRA has set a condition that an employee consenting to work on annual leave should not work for a continuous period of two years.

**What are the minimum requirements relating to sick leave?**
An employee is entitled to 126 days of 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 their full wage; and
- for the second 63 days the employees shall be paid half their wages.

Any employee taking sick leave needs to get a certificate from a medical practitioner. In line with the OHSA and the ELRA, an employer may not dismiss an employee during a 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 the 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 at night for two months before their expected due date.

Maternity leave amounts to 84 days of 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 of paid leave for any of the following reasons: the sickness or death of the employee's child or 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.

**What statutory payments is an employer required to make to in relation to employees, including deductions from employees' salaries and employer contributions, such as unemployment insurance to cover periods of unemployment?**
In Tanzania, employers are required to make statutory payments in relation to employees, and some of these payments include deductions from employees' salaries. The following are statutory payments that the employer is required to make in relation to the employees:

- **Social security contributions:** In Tanzania, private and public sector employees have separate social security schemes –the National Social Security Fund (NSSF) (for private sector employees) and the Public Service Social Security Fund (PSSSF) (for public sector employees). For private employees, the employer is required to contribute a total of 20% of the value of an employee's salary to the NSSF. The law requires 10% of the contributions to be deducted from the employee's salary and 10% to be a direct contribution from the employer. For public employees, the employer is required to contribute a total of 20% of the value of the employee's salary, the law requires 5% of the contribution to be deducted from the employee's salary and 15% to be an employer contribution.
- **Skills and development levy:** Employers are required to pay a tax of 3.5% of gross cash emoluments of employees. The tax is applicable to employers with more than 10 employees.
- **Workers' Compensation Fund:** Employers are required to contribute to the 0.5% of the employees' monthly gross earnings to the fund. The purpose of the fund is to benefit employees who are injured due to their work. The contribution rate is the same for both private and public employees.
- **Pay as You Earn (PAYE):** Employers are required to deduct a sum from employees' salaries to remit to the Tanzania Revenue Authority as personal income tax. The PAYE top marginal rate for resident employees is 30% and a flat rate of 15% for non-resident employees.

Health insurance for employees is a benefit that is not offered by all private companies. However, every public institution is required to have health insurance plans in place for all its employees.

Tanzania does not have an unemployment insurance.

## 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 companies' policies and are often based on company and individual performance.

**THERE IS NO OBLIGATION ON EMPLOYERS TO PROVIDE MEMBERSHIP TO A MEDICAL AID SCHEME.**

**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 ELRA provides that an 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. It is important to note that employee representation is a mandatory requirement in law in instances of redundancies, disciplinary hearings and transfer of an undertaking.

**What are the legal requirements concerning trade unions and worker organisations, including registration obligations, organisational rights, and entitlements to represent employees in the workplace?**
In Tanzania, the Constitution provides for the fundamental right of association. Sections 9 and 10 of the ELRA provide for the right of every employer and employee to join an employers' association or trade union. The ELRA is the law governing registration of trade unions and employers' associations. Trade unions and employers' associations are required to register themselves with the Registrar of Trade Unions, which falls under the Ministry of Labour, Youth, Employment and Persons with Disability.

Under the ELRA, trade unions have the following organisational rights:

- access to employers' premises;
- deductions of trade union dues where employees have authorised an employer to deduct the dues from their salaries;
- trade union representation;
- collective bargaining; and
- leave for trade union activities.

Although the ELRA provides for these organisational rights, the law still requires a trade union to notify the employer that it seeks to exercise the rights. Trade unions have the right to represent employees in dispute resolution, collective bargaining and disciplinary hearings. Furthermore, trade unions have the right to represent employees at the Labour Court.

## SOCIAL BENEFITS, TAX AND PENSIONS

### Workplace injuries

**In the event of workplace injury/disease, will employees be entitled to some form of compensation?**
Workplace injuries and disease are governed by the OHSA. This act makes it obligatory for an employer to provide health, safety and welfare to all employees. Additionally, the OHSA provides for the rehabilitation of any worker who has a workplace injury or disease.

The Workers' Compensation Act also provides for compensation for 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 the 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 they have 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.

### 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 membership to a medical aid scheme. However, some social security funds provide medical benefits to their members with no additional fees required.

## Taxation

**What are 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 highest rate of tax is 30%. For non-residents, it is a flat rate of 15%. Employers are required to withhold PAYE from employees' chargeable income, at a rate specified in the Income Tax Act. Employers with more than 10 employees are also required to pay the skills and development levy, which is charged at the rate of 3.5% of the total emoluments paid to all employees during the month.

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.

**Do employees who work remotely from a foreign jurisdiction and pay taxes in their country of residence, require a Tanzanian work permit to render services to a Tanzanian entity?**

If a person provides services to a company in Tanzania but is physically located in another jurisdiction and paying taxes there, they may not need a Tanzanian work permit but will be required to pay withholding tax of 15% on the service fee they receive from Tanzania.

## Other social benefits

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

The National Social Security Fund Act provides for full or partial pension. There are no provisions in law for unemployment insurance and benefits.

## Skills Development

**What legislative frameworks exist to support workforce skills development, including strategies for upskilling, learnership provisions, financing for skills development, and the regulation of employment services?**

Tanzania does not have a specific legislative framework to support workforce skills development. However, the ELRA requires employers to have training and development policies and practices in place to ensure skills development for their employees. Even though the ELRA includes a general requirement for the establishment of these policies, the law is silent on how trainings should be conducted. In practice, most Tanzanian workplaces have these policies in place to allow employees to attend trainings for upskilling and for study leave for employees to further their skills and knowledge. Some workplaces also offer financial support to employees who want to attend trainings or further their studies.

## Affirmative Action

**What affirmative action obligations do employers have under the law, and what measures must they implement to ensure compliance?**

Different laws in Tanzania have embedded anti-discrimination provisions. Under section 7 of the ELRA, employers must ensure that they promote equal opportunities and strive to eliminate discrimination in any employment policies or practices. Section 33 of the Persons with Disabilities Act 10 of 2010 prohibits employers from discriminating against people with disabilities and treating them differently to people without disabilities. To ensure implementation, the Persons with Disabilities Act imposes a conviction of imprisonment for a period of two years or a fine of TZS 2 million where an employer is found liable for discrimination against persons with disabilities. Employers must have internal policies and procedures to allow employees to report cases of harassment, discrimination and unfair treatment, and they must provide training, development programmes and favourable working conditions for employees with disabilities.

# DATA PRIVACY

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

Tanzania has established the PDPA to ensure the protection of personal data. Under section 14(1) of the PDPA, it is required that employers, among others, register with the Personal Data Protection Commission (PDPC) as either a data processor (a person who processes personal data on behalf of the controller and under the controller's instructions) or a data controller (a person who determines the purpose and means of processing personal data), or both, depending on the type of organisation.

Additionally, Section 27(3) of the PDPA mandates that every organisation registered as a data controller or data processor must have a Data Protection Officer (DPO). To further safeguard personal data, the Commission requires any organisation intending to transfer data outside Tanzania to apply for a permit from the Commission.

The ELRA 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 ELRA.

## 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 automatically transfer 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. There are several options to deal with employees, including (i) to retrench all the employees and then all of them, or just those who meet the requirements of the new employer, can be hired by the new employer, or (ii) the employee's contracts can be terminated by agreement and new contracts can be entered into with the new employer. These options provide flexibility for both the employees and the new employer, ensuring that the transition is smooth and the new employer can select employees who best fit its needs.

**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 to consult 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 ELRA, before retrenchment, consultation with employees is required. Further, according to section 38(1)(b) of the ELRA, employers are obliged to disclose all relevant information for the purposes of the 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 them 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' salary, reinstatement of the employee(s) or re-engage the employee(s) on terms stipulated by the court.

**INTEGRAL TO THE FAIR PROCESS, IS THE RIGHT OF THE EMPLOYEE TO BE AFFORDED A DISCIPLINARY HEARING**

## TERMINATION OF EMPLOYMENT

**What are the statutory obligations and procedures for terminating a contract of employment?**
Any party to an employment contract may initiate the termination of the employment contract. A contract of employment may also be terminated automatically in circumstances such as effluxion of time of a specified time contract, 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
- Employer's operational requirements/ retrenchment

### Termination for misconduct

**What fair process requirements exist?**
Fair process requirements exist in terms of section 37(2)(c) of the ELRA, as well as the Code of Good Practice Rules. Integral to the fair process, is the employee's right to be afforded a disciplinary hearing, where they may challenge the allegations levelled against them and respond to them adequately.

**What substantive fairness requirements may exist?**
The 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 who wishes to challenge their dismissal may refer the matter for arbitration at the Commission for Mediation and Arbitration (CMA) or to the High Court of Tanzania, Labour Division (Labour Court).

**What remedies are available to employees?**
In the event that the arbitrator or Labour Court finds that the dismissal was unfair, the court could order reinstatement with back pay, compensation of not less than 12 months' wages or re-engagement with the employee.

**Is third-party approval for termination/ termination documents required?**
Not required.

### Termination for incapacity

**What fair process requirements exist?**
Section 37(2)(c) of the ELRA provides that employment must be terminated in accordance with fair procedure.

The period of notice of termination 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?**
Before terminating for incapacity, an employer 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 their 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 the 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' wages, or re-engagement with the employee.

**THE EMPLOYER MUST GIVE NOTICE OF ANY INTENTION TO RETRENCH AS SOON AS RETRENCHMENT IS CONTEMPLATED.**

**Is third-party approval for termination/ termination documents required?**
After an 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. No third-party approval is required for this type of termination.

## 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 about the intended retrenchment for the purpose of proper consultation. The employer must also 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?**
In any retrenchment, where the reason for the termination is an employee's refusal 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?**
Discussions must be held regarding severance pay and other payments constituting the retrenchment package. Severance pay amounts to seven days' basic wages for each completed year of continuous service with that employer up to a maximum of 10 years. However, the employee must have worked for 12 consecutive months for the employer.

**Is it permissible to offer employees a voluntary separation package during a redundancy process? Does this undermine the legitimacy of the retrenchment/ redundancy process?**
The employment laws do not stipulate whether voluntary separation packages are permitted or not. However, in practice an employer may offer voluntary separation packages prior to conducting a redundancy process. Where the voluntary package is not accepted, the retrenchment process should proceed.

**Is third party-approval for termination/ termination documents required?**
During these proceedings recognised trade unions need to be consulted where applicable, but no third-party approval is required.

## Notice period

**What notice periods are applicable?**
The employer must give notice of its intention to retrench as soon as retrenchment is contemplated. Further, the employer must give notice inviting employees to consultation meetings.

## Termination benefits

**Are any termination benefits payable in the event of a dismissal for misconduct?**
In terms of section 44 of the ELRA, 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.

An employee who is dismissed fairly for misconduct is not entitled to severance pay.

**Are any termination benefits payable in the event of a dismissal for incapacity?**
Yes. Termination benefits are payable in the event of termination for incapacity. Applicable termination benefits are the same as those outlined above.

**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 employee does not unreasonably refuse to accept alternative employment with that employer or any other employer. Further, the employer and employee must consult and agree on the retrenchment package payable to the employee. This may include standard termination benefits outlined above.

**How is severance pay calculated?**
Severance pay is calculated as being seven days' basic wage for each completed year of continuous service up to a maximum of 10 years.

**Are any termination benefits payable in the event of voluntary resignation by an employee?**
In terms of section 44 of the ELRA, the employer shall pay the employee the following upon resignation:

- 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 notice pay due; and
- any annual leave pay accrued during any incomplete leave cycle.

**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 receive a 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.

GOLDEN TULIP
GOLDEN TULIP

## 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.

**RETIREMENT AT AGE 60**

**IS COMPULSORY**

## POST-TERMINATION RESTRAINTS

### Enforceability of non-compete provisions

**Can contractual non-compete provisions be enforced?**
There is no provision in the ELRA that deals with 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, employer's 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 ELRA prohibits the disclosure of confidential information and there are penalties for breaches of confidentiality clauses, including being sentenced to a fine not exceeding TZS 1 million. It is an offence for the employee to disclose any information relating to the financial or business affairs of the employer.

# UGANDA

| | |
|---|---|
| Official language(s): | English |
| Population (approx.): | **44,5 million** |
| Unemployment rate (2024): | **2.7%** |
| 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 (Citizenship and Immigration Control Act)
- Contracts Act, 2010 (Contracts Act)
- Data Protection and Privacy Act, 2019 (Data Protection and Privacy Act)
- Employment Act 6 of 2006 (Employment Act)
- Income Tax Act, Chapter 340 of the Laws of Uganda (Income Tax Act)
- Occupational Safety and Health Act 5 of 2006 (Occupational Safety and Health Act)
- National Social Security Fund Act, Chapter 222 of the Laws of Uganda (NSSF Act)
- Pensions Act, Chapter 286 of the Laws of Uganda (Pension Act)
- Workers Compensation Act, Chapter 225 of the Laws of Uganda (Workers Compensation Act)

### Regulatory rating

*Heavily regulated.*

# MMAKS Advocates I ALN Uganda

## MMAKS Advocates I ALN Uganda is a leading law firm in Uganda, ranked as Band 1 and Tier 1 by international legal directories such as Chambers Global, IFLR 1000, WTR and Legal 500.

**Ernest Sembatya**
Partner

The firm was formed by a ground-breaking merger of three prominent law firms in 2005, and today stands as one of Uganda's largest law firms with a total of 30 proficiently trained legal professionals, many of whom have qualified from international universities, whilst others have worked at leading international law firms. Two of the firm's senior partners are a Barrister and member of the Honourable Society of the Inner Temple, as well as a qualified solicitor of the Supreme Court of England and Wales.

MMAKS has a full service offering with teams specializing in strategically carved out practice areas. The team regularly advises players in the public and private space, allowing us to amass considerable experience on the issues they face, particularly corporate advisory, corporate and regulatory filings, advisory on governance structures, employment advisory, preparation and review of operational agreements and structures, constitutional, governance and operational or regulatory issues, environment, tax, real estate, public procurements, insurance, intellectual property, information technology, criminal investigations, litigation and alternative dispute resolution.

As a member of ALN, MMAKS has the ability to draw on the skills and expertise of other ALN member firms. The ALN network works on a highly integrated basis, as the member firms have worked together for many years and the partners and associates have personal relationships between them. ALN lawyers are seconded within firms, train together and routinely work together in cross border groups.

MMAKS Advocates is a member of the Employment Law Alliance (ELA), a global partner for HR Legal Solutions wherever you do business. ELA lawyers advise on, among other issues, compliance, employee benefits, discrimination, sexual harassment, or wrongful termination.

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## TRENDS

### General

The Court of Appeal has clarified that an employer can terminate an employment contract by issuing a notice or paying *in lieu* of the notice. This addressed the uncertainty created by the Industrial Court that an employer was required to give a reason for termination in addition to issuing a notice or paying *in lieu* thereof.

The Industrial Court recently held that "*incompatibility*" is a form of poor performance or misconduct, and an employer is obligated to subject an employee to a disciplinary hearing before dismissing them based on "*incompatibility*".

### Data protection and privacy

The Data Protection and Privacy Act provides for the protection of the privacy of individuals and of personal data, and was enacted on 3 May 2019. This was followed by the Data Protection and Privacy Regulations, 2021.

To buttress the importance attached to individuals' privacy and personal data, the act established a Personal Data Protection Office, an independent body within the National Information Technology Authority – Uganda to, among other things, oversee the implementation and enforcement of the act and maintain a data protection and privacy register. The Personal Data Protection Office was operationalised in August 2021.

Personal data, as defined under the Data Protection and Privacy Act, is any information from which a person can be identified, for example, information relating to a person's nationality, age, marital status, educational level, occupation or identification number. Special personal data, on the other hand, is information relating to an individual's religious or philosophical beliefs, political opinion, sexual life, financial information, health status or medical records.

The Data Protection and Privacy Act permits the processing or storage of personal data outside Uganda provided that adequate measures are in place in the country in which the data is processed or stored that are at least equivalent to the protection provided under this act or the data subject has consented.

Recently, claims have been presented before the High Court of Uganda for breach of the Data Protection and Privacy Act, and the court has awarded damages for the use of an employee's personal data without their consent.

## HIRING DECISIONS

### Pre-hire checks

**Can employers conduct pre-employment checks?**

Employers are permitted to conduct pre-employment checks, the most common of which are criminal record checks. Further, section 21 of the Occupational Safety and Health Act provides for medical examinations before an employee is engaged in work where they would be exposed to hazards.

### Hiring options

**What hiring options are available to employers?**

There are various hiring options available to employers, including:

- Permanent employment
- Fixed-term employment
- Part-time employment
- Casual employees (for a maximum of four 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 Citizenship and Immigration Control Act. This act provides that a person who is not a citizen of Uganda may not be employed or engage in private business unless they are in 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, the contract must be attested to by the Labour Office. Employees must be provided with written particulars of their employment within 12 weeks of commencing work.

### Probation

**Are probationary periods permitted in Uganda?**
Yes. In terms of section 67 of the Employment Act, probationary contracts or periods may not exceed six months, must clearly state that the purpose is for probation and must be in writing. Although probation periods may not exceed six months, they may be extended for a further six 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 14 days' notice or upon payment of seven days' wages *in lieu* of notice by the employer.

### Minimum employment rights

**Are any employees excluded from the application of the Employment Act?**
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.

**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 Parliament in February 2019. The purpose of the 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 regard to minimum wage determination.

**What are the maximum working hours?**
The legislated maximum number of working hours per week is 48. Parties may agree that the normal working hours of an employee may exceed 48 hours, but such an agreement shall not provide for working hours to exceed 10 hours per day or 56 hours per week. If employees are employed in shifts, they may be required to work in excess of 10 hours in any one day or 48 hours in any one week, provided that the average number of hours worked over a three-week period does not exceed 10 hours a day or 56 hours per week.

**What are the minimum requirements relating to overtime?**
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 day's rest for each cycle of six 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 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 employer's expense on some other day that would otherwise be a workday where the employee has worked on a public holiday.

**What are the minimum requirements relating to annual leave?**
An employee who has performed six months' continuous service or who works on a contract of service for 16 hours a week or more, is entitled to seven days of annual leave for each four-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.

**What are the minimum requirements relating to sick leave?**
An employee who has worked for a minimum of one month and who is ordinarily employed for at least 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 third 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 60 working days of maternity leave on full pay, of which a minimum of four weeks shall follow the birth or miscarriage.

A male employee is entitled to four working days of paternity leave immediately after the delivery or miscarriage.

**What are the minimum requirements relating to family responsibility leave?**
An employee is entitled to compassionate leave of three days on any one occasion and a maximum of six days in any calendar year due to death of a family member or dependent relative.

**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.

**What statutory payments is an employer required to make to the government in relation to employees, including deductions from employees' salaries and employer contributions, such as unemployment insurance to cover periods of unemployment?**

### Pay-As-You-Earn tax
This is taxed on income earned by employees from their employment income. Employment income includes the value of any benefits in kind either provided by the employer or paid on behalf of the employee, termination benefits or payments, private or personal expenditures reimbursed by the employer, wages, salaries, leave pay, payment *in lieu* of leave, overtime, commission, gratuities, bonus payments, any form of allowance, and any discount or profit-/loss-on-share transactions. The amount that is taxed will depend on how much income is being earned by the employee or if they are a resident or non-resident.

### National Social Security Fund contribution
An individual in employment is obligated to make a contribution of 5% of their gross earnings to the National Social Security Fund.

An individual who is an employer is also obligated to make contributions to the National Social Security Fund for each employee, amounting to 10% of their gross pay.

### Local service tax
An individual in employment is obligated to pay local service tax to the town council where they reside.

According to the Local Service Tax Act and guidelines for the implementation of the local service tax, employers are required to determine and deduct the local service tax from the salaries and wages of their employees within a period of four months not later than the 15 November.

There are no required unemployment contributions.

### 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 the law.

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

**FAMILY RESPONSIBILITY LEAVE IS NOT PROVIDED FOR IN THE EMPLOYMENT ACT.**

**What are the legal requirements concerning trade unions and worker organisations, including registration obligations, organisational rights, and entitlements to represent employees in the workplace?**
Employees have the right to form and join unions, bargain collectively and take lawful industrial action. Any group of employees seeking to form a trade union must apply to the Registrar of Labour Unions for registration. The Labour Unions Act Cap. 228 establishes that every employer is bound to recognise a registered labour union that has members among the employer's workforce, for purposes of collective bargaining on matters concerning those employees. In other words, if any employees of a workplace are members of a registered union (and fall within that union's defined membership scope), the employer must acknowledge that union as their representative. Employers cannot interfere by restraining, coercing or penalising workers for union involvement.

Once recognised, the union has the right to represent its members in negotiations over employment terms and other workplace issues affecting them. Both the employer and the union are legally required to bargain in good faith when dealing with each other on employment matters.

This framework ensures that unions can meaningfully represent employees' interests and engage in collective negotiations. Employers cannot simply refuse to deal with a union or bypass it in favour of individual arrangements without violating the law. Union officials must be allowed workplace access. Registered unions enjoy legal status, allowing them to sue or be sued, and have immunity from civil liability for lawful industrial actions.

Employers must recognise registered unions representing their employees for collective bargaining. If an employer refuses, the union can report the matter to the Registrar of Labour Unions, who can order recognition within 21 days. If non-compliance persists, the Industrial Court may intervene and even set employment terms. Employers who refuse recognition may also face fines or imprisonment.

## 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?**
Whereas this is not expressly provided for in the law, it is the expectation that employees will be reintegrated, short of which the employer is required to terminate the employee on medical grounds following the terms of the contract of employment.

### 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 Pay-As-You-Earn return on a monthly basis, by the fifteenth of every month, as required by the Income Tax Act.

**Do employees who work remotely from a foreign jurisdiction and pay taxes in their country of residence, require a Uganda work permit to render services to a Uganda entity?**
No.

### Other social benefits

**What are other social benefits contributions must be made?**
Under the NSSF Act, an employer must pay 10% of its employee's salaries to the National Social Security Fund and employees must contribute 5% of their salaries to the fund.

### Skills Development

**What legislative frameworks exist to support workforce skills development, including strategies for upskilling, learnership provisions, financing for skills development, and the regulation of employment services?**
There are no legislative provisions that mandate or support workforce skills development and any such initiatives are at the discretion of the employer.

### Affirmative action

**What affirmative action obligations do employers have under the law, and what measures must they implement to ensure compliance?**
There are no affirmative action obligations under the law and employers only have an obligation to ensure that there is non-discrimination in their workplaces.

## DATA PRIVACY

**What data privacy (if any) obligations rest on employers in respect of their employees?**
The Data Protection and Privacy Act commenced on 1 March 2019. In terms of the provisions of the act, all employers must obtain consent from 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.

## BUSINESS TRANSFERS

**Are employees automatically transferred to a new employer in the event of transfer of a business as a going concern?**
The Employment Act provides that where a trade or business is transferred in whole or in part, the contracts of service of all employees employed at the date of transfer are automatically transferred to the transferee, and all rights and obligations between each employee and the transferee continue to apply as if they had been rights and obligations concluded between the employee and the transferee.

Where the transfer does not involve the whole or part of a business, the employees' contracts of service cannot be transferred from one employer to another without the consent of the employee. In such transfers, the employer is required to seek the consent of the employees at least 30 days before the transfer. Employees who withhold their consent are paid their terminal dues, being accrued wages, outstanding allowances and other contractual benefits. If these employees are unionised, the transfer is negotiated between the union and the employer, and where the employees consent to the transfer, the law requires that in the absence of an agreement between the new employer and the employees to the contrary, any outstanding claims should be computed and paid by the new employer within two months of 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?**
There is no legal requirement for an employer to notify and/or consult employees of an intended sale or transfer of the business in whole or part. In practice, however, out of courtesy employers notify employees about such transfers within a time deemed reasonable.

**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 terminations connected to the transfer of a business would be unfair unless for an economic, technical or organisational reason.

## 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 or periods;
- dismissal, following the procedure outlined in section 66 of the Employment Act;
- where an employee is incapable of reporting for duty for a period exceeding one month; and
- the employee reaching retirement age.

### Termination for misconduct

**Can an employee be dismissed for misconduct?**
Yes. An employee must be provided with written reasons for the dismissal. In terms of section 69 of the Employment Act, an employer is entitled to summarily dismiss an employee, and the dismissal shall be justified

**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 an employee has indicated by their 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 weeks' notice for length of service between six months and a year.
- One month's notice for length of service between one year and five years.
- Two months' notice for contracts between five and 10 years.
- Three months' notice for contracts for over ten 10 years.

## Termination for incapacity

**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 dismissal.

**What notice periods are applicable?**
Notice periods depend on the employee's length of service. The following notice periods are applicable:

- Two weeks' notice for length of service between six months and a year
- One month's notice for length of service between one year and five years;
- Two months' notice for length of service between five and 10 years.
- Three months' notice for length of service for over 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 months of their 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 the act, 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
- 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.

## Termination for operational requirements

**Can an employee be terminated for operational requirements?**

Terminations 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 termination of more than 10 employees over a period of three months for reasons of operational requirements. Failure to abide by the provisions of section 81 of the Employment Act in the case of collective terminations constitutes an offence.

The Industrial Court has held that restructurings or redundancies involving fewer than 10 employees, notwithstanding the duration of enforcement, require compliance with section 81 of the Employment Act.

**Is it permissible to offer employees a voluntary separation package during a redundancy process? Does this undermine the legitimacy of the retrenchment/ redundancy process?**

An employer is at liberty to propose a voluntary separation package during a redundancy process wherein the terminal dues and duration of their payment can be agreed upon. It is advisable that the terms of the voluntary separation package be set out in an agreement in which the employees unequivocally undertake to neither seek further compensation nor file claims for unlawful termination in future.

The Employment Act requires mutual settlement agreements to be endorsed/signed by a labour officer. A voluntary separation package during a redundancy process can not undermine the legitimacy of the retrenchment/ redundancy process.

### Termination benefits

**Are any termination benefits payable in the event of a termination 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.

**How is severance pay calculated?**
According to section 89 of the Employment Act, severance pay is calculated based on the agreement between the employer and employee or the labour union representing them. In the absence of this agreement, the Industrial Court has awarded severance pay at the rate of one month for every year served.

**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 months.

**Employee remedies?**
Reinstatement or compensation.

**Third party approval for termination/ termination documents?**
This is not provided for in the Employment Act.

## RETIREMENT

**What is the normal retirement age?**
There no statutory retirement age in the private sector. The normal retirement age is, however, 55.

**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.

**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

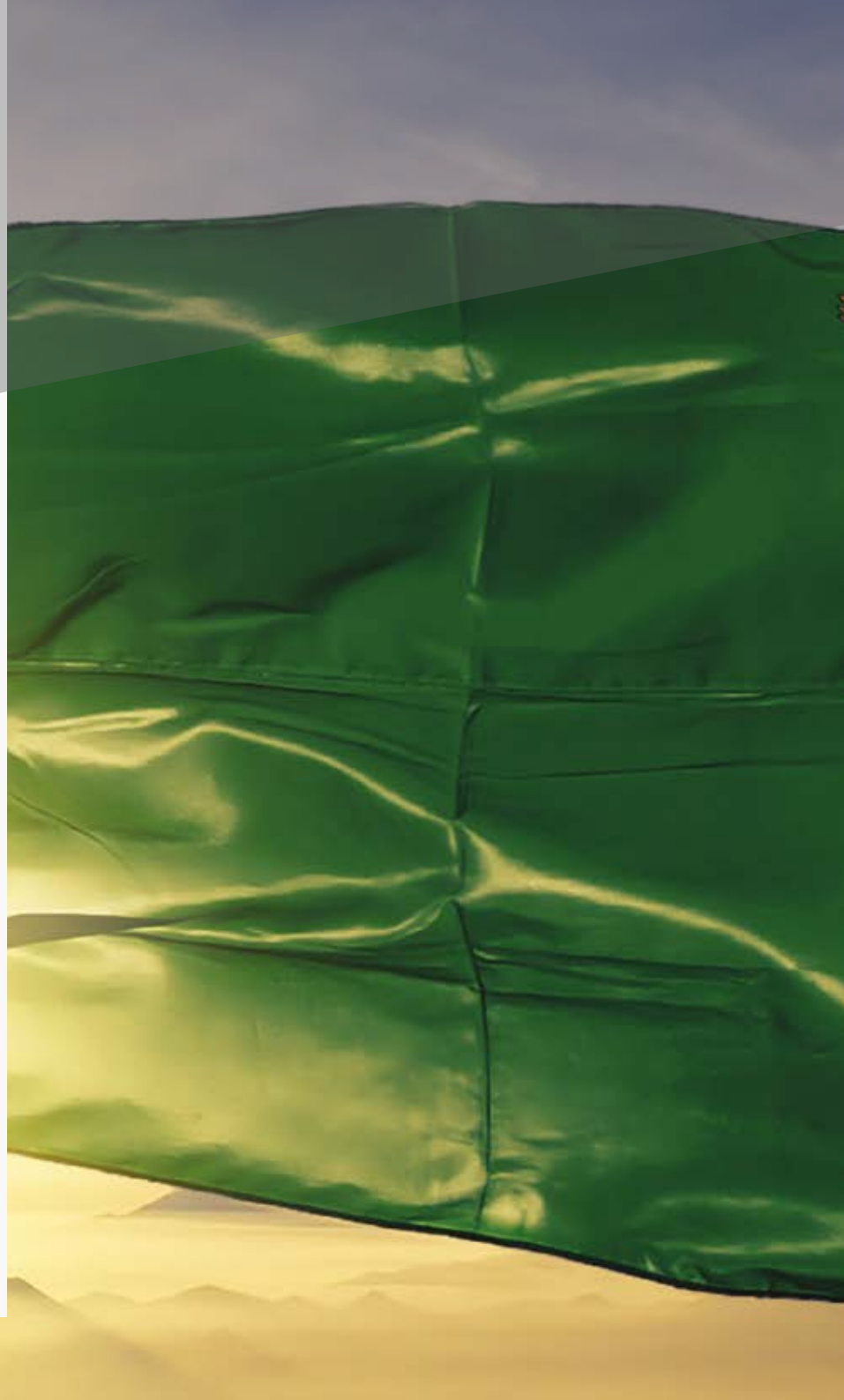
**Can contractual non-compete provisions be enforced? Is it common for such *"restraints"* to form part of employment contracts?**

Section 21 of the Contracts Act, 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 confident 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.): | **21,13 million** |
| Unemployment rate (2024): | **5.9%** |
| 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 24 of 2010
- Workers Compensation Act 10 of 1999
- Employment Code Act 3 of 2019 (Employment Code)
- Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia
- Ministerial orders made pursuant to the Employment Code Act 3 of 2019
- National Health Insurance Act 2 of 2018
- National Pension Scheme Act, Chapter 256 of the Laws of Zambia

### Regulatory rating

*Heavily regulated.*

# Corpus Legal Practitioners

Corpus, a full services corporate and commercial law firm located in Lusaka, Zambia, strives to offer exceptional legal services adhering to international standards. With an extensive array of services, we cater to local, regional, and international clients, serving as a pivotal legal bridge to Zambia's growing market. Our objective is to facilitate clients' endeavours with efficiency, minimizing legal and regulatory risks.

**Jacqueline Jhala**
Partner

Our competence extends beyond technical advice, encompassing transaction management, negotiation, and drafting skills, all upheld to the highest global benchmarks. We represent corporations, NGOs, financial institutions, and more, furnishing timely, pertinent legal guidance.

Our core strengths span Corporate Advisory, Banking & Finance, Dispute Resolution & Public Policy, and Energy, Resources & Infrastructure.

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## TRENDS

### General

Since the COVID-19 pandemic, which required most employees to work from home unless they provided essential services, it has become more acceptable for employees to work from home as most employers have developed facilities to accommodate this arrangement.

While this is positive for employers, the change in the work landscape has brought about issues surrounding work-life balance and health and safety concerns which an employer is still mandated to comply with.

### The introduction of artificial intelligence in the workplace

While this is a trending topic, its implications for the employment landscape in Zambia are yet to be fully assessed as employers roll out artificial intelligence (AI) in their workplaces. Labour laws may need to address issues like retraining, unemployment benefits and transitions to new types of employment arrangements owing to the potential job displacements or changes in job roles likely to emanate from the introduction of AI. Consideration may also need to be given to workplace health and safety as AI systems must be integrated in ways that ensure safety and comply with existing workplace safety regulations. This includes addressing new types of workplace hazards and ensuring that AI systems are reliable and do not pose unforeseen risks. In addition, data privacy laws would need to be strengthened, and compliance enhanced as AI often requires large amounts of data, which can include personal information about employees. Also, companies using AI must ensure their practices comply with existing labour laws, including those related to wage and hour standards, labour relations and employee benefits. As AI technologies evolve, so too might these standards, requiring ongoing compliance efforts.

### Data protection and privacy

In 2021, Zambia enacted the Data Protection Act 3 of 2021 (DPA) which applies to the processing of personal data whether done electronically or not. *"Personal data"* is defined under the DPA to mean:

> *"Data which relates to an individual who can be directly or indirectly identified from that data which includes a name, an identification number, location data, an online identifier, or one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of that natural person."*

In view of this, any person who engages in the processing of personal data is required to be registered with the Data Protection Commission. This registration is dependent on a person being classified as a data controller or a data processor. In light of this, and from a labour law perspective, employers qualify as data controllers and are therefore required to comply with the applicable provisions in the DPA, which include registering as data controllers.

### Remote working and its implications for the payment of taxes where employees work from another jurisdiction

Due to the globalisation of the economy, it is becoming increasingly common for people to work remotely for employers from different parts of the world. An *"employee"* under the Employment Code is defined as a person who, in return for wages, or commission, enters into a contract of employment and includes a casual employee and a person employed under a contract of apprenticeship made in accordance with the Apprenticeship Act, but does not include an independent contractor or

a person engaged to perform piece work. As noted, the definition of an employee under Zambian law is not dependent on the residence status of that person.

From a tax law perspective, the Income Tax Act, Chapter 323 of the Laws of Zambia (ITA) provides that any income derived from a source deemed to be within Zambia shall be subject to tax. For employment purposes, the ITA provides that income is deemed to be from a source within Zambia if the remuneration is from employment exercised or office held in Zambia, or if it is received by virtue of any service rendered or work or labour done by a person or partnership in the carrying on in Zambia of any business, irrespective of whether payment is made outside Zambia, or by a person resident outside Zambia.

In this regard, an employee working remotely outside Zambia will be subject to the same employee taxes as a person resident in Zambia irrespective of where payment is made from.

# HIRING DECISIONS

## Pre-hire checks

**Can employers conduct pre-employment checks?**
Pre-hire checks are permissible, including medical examinations to assess an 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.

## Hiring options

**What hiring options are available to employers?**
In terms of section 19 of the Employment Code, a contract of employment may take the form of:

- A permanent contract
- A long-term contract
- A contract for a specific task
- A contract for a probationary period not exceeding three months

**Is there a concept of dual employment or deemed employment in Zambia? In what instances would this apply?**
There is no express restriction under the Employment Code that prevents a person from engaging in dual employment. These restrictions are usually contractual in nature.

Furthermore, the Employment Code does not provide for the concept of deemed employment. An "*employee*" is defined as a person who, in return for wages,

or commission, enters into a contract of employment and includes a casual employee and a person employed under a contract of apprenticeship made in accordance with the Apprenticeship Act, but does not include an independent contractor or a person engaged to perform piece work. Only a person falling within the above definition shall be considered an employee under Zambian law, regardless of the manner in which such a person came to employment

## Immigration

**Are there immigration requirements?**
Any foreign employee intending on working in Zambia for more than six 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.

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## 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 months or more, or for a number of working days equivalent to six months or more within a year, the contract of employment must be in writing.

**Are zero-hour contracts permissible (contracts without a minimum set of working hours or any basic salary undertaking)?**

Zero-hour contracts are not permissible under Zambian law. Section 23 of the Employment Code provides that an employer shall prepare a written contract of employment specifying the rights and obligations of the parties to the contract and include the minimum particulars of the contract as set out in the Second Schedule to the act. Under the Second Schedule, the Employment Code provides that the terms of an employment contract must include the ordinary working hours and days, the wages to be paid and the scale or rate of wages, the method of calculating the wages and details of any other benefits, details of any cash payments, payments in kind or any other benefits, and the intervals of payment of the wages of the employee, monthly or at a shorter period, as the case may be.

With respect to working hours, section 74(1) and 74(2) of the Employment Code provide that a normal day's work of a full-time employee shall consist of eight hours of actual work and may begin on any day of the week, including a public holiday, where that employee works on a public holiday. In addition, an employer and an employee, other than a part-time employee, may agree that the employee works in excess of the stipulated hours without added remuneration if the number of hours covered in a week does not exceed 48 hours or a lesser number of hours that may be specified in a contract of employment or collective agreement.

Therefore, the Employment Code requires that a contract specifies the working hours, and it also requires that any employee who works in excess of 48 hours a week should be paid overtime at the following rates:

- an employee who works in excess of 48 hours in a week, 1.5 times the employee's hourly rate of pay;
- an employ a watchperson or guard who works in excess of 60 hours a week, 1.5 times the watch person or guard's hourly rate of pay; and
- an employee who works on a public holiday or on a weekly rest day, where the public holiday or weekly rest day does not form part of the employee's normal working week, double the employee's hourly rate of pay.

### Probation

**Are probationary periods permitted in Zambia?**

Yes. Probationary contracts may be concluded for a period of three months to assess the suitability of an employee. A probationary contract may be extended for a further period not exceeding three months.

**ZAMBIA RECOGNISES BOTH ORAL AND WRITTEN CONTRACTS OF EMPLOYMENT.**

## 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 Zambia Police Service, members of the Zambia 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 Employment Code. These orders apply only to specified groups of employees or "*protected workers*" as decided by the Minister of Labour and Social Security through the issuance of statutory orders.

**What are the maximum working hours?**
An employee may not work more than 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.

**FEMALE EMPLOYEES ARE ENTITLED TO**
**A MINIMUM OF**
**FOURTEEN (14) WEEKS MATERNITY LEAVE**

**What are the minimum requirements relating to overtime?**
Any employee who works in excess of 48 hours in a week shall be paid at 1.5 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, the employee must perform their 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 12 consecutive months shall be granted annual leave at the rate of two days per month, per annum.

An employee shall be entitled to full remuneration on all public holidays designated in terms of the Public Holidays Act, Chapter 272, provided that the employee is not absent from work on the day preceding or the day following the public holiday without the consent of the employer or without a reasonable excuse for their absence. Notwithstanding this, 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 healthcare practitioner, where the employee is unable to perform their normal duties due to illness or injury.

Employees on short-term contracts are entitled to 26 days of sick leave at full pay and a further 26 days of sick leave at half pay. Employees on long-term contracts are entitled to full pay during the first three months and thereafter, half pay for a further three months in any 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 months from the date of the illness or injury and pay the employee a lump sum of not less than three 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 14 weeks of maternity leave, six weeks of which must be taken immediately after the delivery. In the event of multiple births, a female employee is entitled to a further four weeks of maternity leave.

Male employees are entitled to paternity leave of not less than five 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 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 months or more, may, on the production of a medical certificate, be granted paid family responsibility leave for a period not exceeding seven days per annum for the purposes of nursing a sick spouse, child or dependant. An employee is entitled to three paid leave days per annum to cover responsibilities related to the care, health or education of their child, spouse or dependant.

Further, in terms of section 40 of the Employment Code, an employee is entitled to 12 days of paid compassionate leave per annum where they have either lost a spouse, parent, child or dependant or have 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.

**What statutory payments is an employer required to make in relation to employees, including deductions from employees' salaries and employer contributions, such as unemployment insurance to cover periods of unemployment?**
Section 68 of the Employment Code Act 3 of 2019 (ECA) recognises certain deductions that can be made to an employee's wages. In this respect, the provision states that despite any other provisions of the ECA, an employer may make deductions from the wages payable to an employee in respect of:

- taxation and other deductions under a written law;
- contributions to any registered social security, medical or other fund or scheme to which the employee is required by law or has agreed in writing to contribute;
- any salary advance made to the employee by the employer on the terms agreed to by the employer and employee;
- any amount due to a third party to whom, on the terms consented to in writing by the employee or as required by a judgment of the court, the employer has given assurance or security from any money owed to the employee by the employer;
- an amount paid to the employee in error, in excess of wages due to the employee;
- a reasonable amount for any damage done to, or loss of, any property lawfully owned by or in the custody of the employer, where the damage or loss is occasioned by any deliberate or negligent action or omission on the employee's part as proved through the employer's disciplinary process; and
- an amount equal to any shortage of money or goods entrusted to the employee by the employer, which shortage arose through the employee's negligence or dishonesty as proved through the employer's disciplinary process.

**EMPLOYER WILL BE RESPONSIBLE FOR REGISTERING ITS EMPLOYEES AS MEMBERS OF THE**

**NATIONAL HEALTH INSURANCE SCHEME**

The following are the mandatory statutory deductions an employer is required to make from an employee's salary and the requisite employer contributions:

### Pay-As-You-Earn

Income earned from employment exercised or office held in Zambia or income received by virtue of any service rendered or work or labour done by a person or partnership in the carrying on in Zambia of any business, irrespective of whether payment is made outside Zambia, or by a person resident outside Zambia, is subject to tax under the ITA. Tax on an employee's income is administered under the Pay-As-You-Earn system, which is regulated under the ITA. An employer is required to calculate the tax payable by every employee, deduct the requisite tax from the employee's emoluments, and thereafter remit the tax to the Zambia Revenue Authority (ZRA) by the tenth of the month following the month in which the deduction was made.

### National Pension Scheme

An employer is required to register with the National Pension Scheme Authority, pursuant to the National Pension Scheme Act 40 of 1996 and remit social security contributions in respect of income earned by an employee. Contributions are to be made by the tenth of the month following the month in which they accrued and consist of both the employer's and employee's contributions at the current rate of 10% (contributed equally by the employer and the employee at 5% each) of the employee's gross monthly income, subject to a contribution ceiling amount which was ZMW 3,416.40 (approximately USD 117.81) for the year 2025.

### National Health Insurance Scheme

Under the National Health Insurance Act 2 of 2018, an employer is responsible for registering its employees as members of the National Health Insurance Scheme and paying the prescribed contributions by the tenth of the month following the month in which the contribution accrued. The employer is required to contribute 1% of the employee's basic salary and the employee is equally required to contribute 1% of their basic salary to the scheme.

## Workers' compensation

The Workers' Compensation Act 10 of 1999 (WCA) regulates the compensation of workers for disabilities suffered or diseases contracted during the course of employment and the payment of contributions to the Compensation Fund by employers. An employer must provide the Workers' Compensation Commissioner with information relating to the amount of earnings of each of its employees during the past financial year, an estimate of the earnings for which the employer expects to become liable during the current financial year, and any other information that may be required in respect of the workers or their earnings. The Workers' Compensation Commissioner will then use the information provided to prescribe an assessed amount that is payable by the employer to the fund. What is payable at present is a percentage of the total earnings, dependent on the number of employees a company has employed as well as the sector and type of business that the employer is engaged in.

## Skills development levy

The Skills Development Levy Act 46 of 2016 (Skills Development Levy Act) provides for the imposition, payment and collection of a skills development levy. The current rate of the levy is 0.5% on gross pay payable by an employer to an employee. The employer is required to pay the levy in the same month in which the emoluments due to an employee are paid or become payable. The obligation to pay for the skills development levy lies solely on the employer and is to be made to the ZRA.

## 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 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.

**What are the legal requirements concerning trade unions and worker organisations, including registration obligations, organisational rights, and entitlements to represent employees in the workplace?**

According to section 5(1)(b) of the Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia (ILRA) as amended by S.I, No. 8 of 2008, every employee has the right to be a member of a trade union within the sector, trade, undertaking, establishment or industry within which that employee is engaged. Section 4(1) of the ILRA provides that an employee shall cease to be an eligible employee if they become a member of management. An eligible employee is defined under the ILRA to mean a

unionised employee other than a member of the management of an undertaking. Management in relation to an employee is defined in the ILRA to mean a person:

- who is the head of an institution or undertaking and has authority to hire, suspend, promote or demote an employee of the institution or undertaking;
- who is the head of a department in an institution or undertaking and has authority in the financial, operational, human resource, security or policy matters of the institution or undertaking;
- with decision-making authority in the financial, operational, personnel or policy matters of an institution or undertaking and who represents and negotiates on behalf of the institution or undertaking in collective bargaining or negotiations with any trade union; or
- with written institutional authority to perform the functions referred to above.

Section 63(1) of the ILRA requires every employer employing 25 or more eligible employees to register with the Commissioner of Labour. Furthermore, section 64(1) of the ILRA provides that not later than three months from the date of registration under section 63, a registered employer and a trade union, if any, to which the employees belong, shall enter into a recognition agreement at sector, trade, undertaking, establishment or industry level, as the case may be.

Once an employee has successfully affiliated themselves to a union, the employer's obligation to remit subscription fees to such a union becomes effective. Section 22(1) of the ILRA provides that an employer may, by agreement with an eligible employee, deduct the amount of subscription prescribed by the constitution of the trade union from the wages of such eligible employee if the employee is a member of such trade union. The act further mandates an employer to remit the subscription fee not later than 14 days after the end of each month.

An employee has the following rights pursuant to section 5 of the ILRA:

- the right to take part in the formation of a trade union;
- the right to be a member of a trade union within the sector, trade, undertaking establishment or industry in which that employee is engaged;
- the right, at any appropriate time, to take part in the activities of a trade union, including any activities as, or with a view to becoming, an officer of the trade union, seeking election or accepting appointment, and if so elected or appointed, to hold office as such officer subject only to the constitution of the trade union concerned;
- the right to obtain leave of absence from work in the exercise of the rights provided for above and the leave applied for shall not be unreasonably withheld by the employer;
- the right not to be prevented, dismissed, penalised, victimised, discriminated against or deterred from exercising the rights conferred on the employee under this act;
- the right of any employee not to be a member of a trade union or to be required to relinquish membership;
- the right not to be dismissed, victimised or prejudiced for exercising or for the anticipated exercise of any right recognised by the IRLA or any other law relating to employment; or for participating in any proceedings relating thereto;
- the right not to do work normally done by an employee who is lawfully on strike or who is locked out, unless such work constitutes an essential service, or if on request the employee voluntarily waives the right specified under this act; and
- the right not to be dismissed, penalised or disciplined on the grounds that the employee:
  - has been or is a complainant or witness or has given evidence in any proceedings, whether instituted against the employer before a court; or
  - is entitled to a reward, benefit or compensation against any employer, organisation or class of employer to which the employer of that employee belongs or against any other person, in consequence of a decision made by a court in favour of that employee or in favour of a trade union or class of employees to which the employee belongs.

## 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 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 employee's 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 healthcare from accredited healthcare 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 healthcare from an accredited healthcare provider in Zambia.

**AN EMPLOYEE HAS THE RIGHT**

**WORKERS ARE ENTITLED TO COMPENSATION FROM THE**

**WORKERS' COMPENSATION CONTROL BOARD**

## Taxation

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

The Employment Code provides that an employer may make deductions from the wages payable to an employee in respect of taxation and other deductions under a written law. Under Zambian law, employees are mandated to pay income tax on emoluments under the Pay-As-You-Earn system administered by the ZRA. The ITA provides that on the making of any payment of, or on account of, any emolument, tax shall, subject to and in accordance with regulations made by the Minister of Finance, be deducted or repaid by the person or partnership making the payment. Currently, employee tax rate bands are as follows:

| TAX BANDS | TAX RATE |
|---|---|
| First ZMW 5,100 | 0% |
| ZMW 5,101 – ZMW 7,100 | 20% |
| ZMW 7,101 – ZMW 9,200 | 30% |
| Above ZMW 9,200 | 37% |

**Do employees who work remotely from a foreign jurisdiction and pay taxes in their country of residence, require a Zambian work permit to render services to a Zambian entity?**

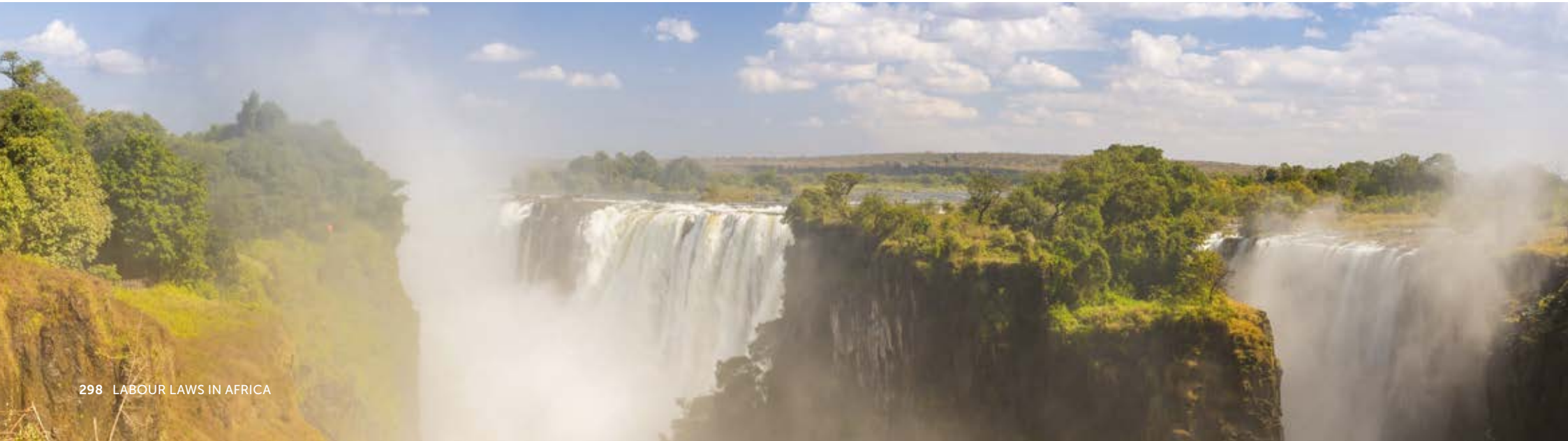
Employees who work remotely outside Zambia are not required to obtain work permits to render services to a Zambian entity unless that person intends to enter Zambia to perform the work.

## Other social benefits

*Skills development*

**What legislative frameworks exist to support workforce skills development, including strategies for upskilling, learnership provisions, financing for skills development, and the regulation of employment services?**

The Skills Development Levy Act provides for the imposition, payment and collection of a skills development levy. The current rate of the levy is 0.5% on gross pay



payable by an employer to an employee. The employer is required to pay the levy in the same month in which the emoluments due to an employee are paid or become payable. The obligation to pay for the skills development levy lies solely on the employer and is to be made to the ZRA. The Skills Development Levy Act does not, however, apply to:

- an employer in the public service or a local authority;
- an employer whose annual turnover is below ZMW 800,000 (approximately USD 29,923.21); and
- a public benefit organisation approved as such under the ITA, exclusively established for the purpose of providing a public benefit or an organisation exempted from income taxation under any other written law.

In view of the above and to the best of our knowledge, the Skills Development Levy Act does not provide guidance with respect to qualifying criteria for skills development and any programmes thereof.

*Affirmative Action*

**What affirmative action obligations do employers have under the law, and what measures must they implement to ensure compliance?**

We understand affirmative action to mean *"the practice or policy of favouring individuals belonging to groups regarded as disadvantaged or subject to discrimination; positive discrimination"*.

**THE EMPLOYEE IS ENTITLED TO ALL THEIR ACCRUED BENEFITS.**

In view of this definition, Zambia does not provide strict affirmative action obligations for employers under the ECA. However, the ECA makes provision for the prioritisation of employment of citizens. Section 14 of the ECA mandates an employer, when filling in an employment vacancy, to employ a citizen unless there is no citizen who possesses the skills required for that job, or a citizen does not apply for that job. Further, the ECA requires an employer who employs an expatriate to undertake the following:

- where practicable, designate an understudy of that expatriate;
- submit to the Labour Commissioner a schedule of training programmes and management succession of the understudy; and
- submit to the Labour Commissioner annual returns in the prescribed manner and form.

The ECA defines an understudy to mean a citizen identified to work as a trainee under the supervision of an expatriate employee:

- to improve the understudy's skills within two years or a period that may be determined by the Labour Commissioner; and
- where applicable, with a view of eventually taking over the job.

It is also important to note that the ECA prohibits an employer from:

- employing, in the name of the employer, an expatriate to engage in work that is not a critical skill (however, the Skills Advisory Committee, which is mandated under the ECA to formulate a list of critical skills, is yet to publish this list);
- causing the expatriate to engage in work other than that authorised under the permit issued in accordance with the Immigration Act;
- dismiss or lay off a citizen or resident as a result of having employed an expatriate; or
- exert coercion, threaten, or use any other illegal means on an expatriate for the expatriate to engage in work without the consent of the expatriate.

## 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 about 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.

**ZAMBIA DOES NOT PROVIDE STRICT AFFIRMATIVE ACTION OBLIGATIONS FOR EMPLOYERS UNDER THE ECA.**

## 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, an 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, they may be liable for damages. An employer may not terminate an employee's contract of employment 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:

- 24 hours for a contract of employment not exceeding one month; or
- 24 days for a contract of employment exceeding a month but not more than three months; or
- 30 days for contracts of employment exceeding three months.

Where the contract of employment is for a period exceeding six 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
- 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.

**Can an employee be dismissed for operational requirements?**
Yes. Employers 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.

**Is it permissible to offer employees a voluntary separation package during a redundancy process? Does this undermine the legitimacy of the retrenchment/ redundancy process?**
The Employment Code provides that an employee whose contract has been terminated by way of redundancy, unless better terms are agreed between the employer and the employee, is entitled to a minimum redundancy payment of not less than two months' pay (which includes basic pay together with any allowances) for every year served in addition to all other accrued benefits that the employee is entitled to under their contract.

In this regard, should an employee voluntarily choose to be declared redundant during a redundancy exercise, that employee is still entitled to be paid an amount not less than that prescribed in the Employment Code. Further, as redundancies are statutory driven, the process laid out in the Employment Code would also have to be followed. Therefore, provided a termination qualifies as a redundancy under the Employment Code, the process and payment would have to comply with the law. The Employment Code provides that a redundancy occurs where the termination is wholly or in part due to:

- the employer ceasing or intending to cease to carry on the business by virtue of which the employees were engaged;
- the business ceasing or diminishing or expected to be ceasing or diminishing the requirement for the employees to carry out work of a particular kind in the place where the employees were engaged; or
- an adverse alteration of the employee's conditions of service which the employee has not consented to.

**Are any termination benefits payable in the event of a dismissal for operational requirements?**
Not less than two months' basic pay for each year of service, repatriation benefits and any other accrued benefits or other benefits to which the employee may be entitled as compensation for the 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, the 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 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 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 effected; and
- the nature of the redundancy package.

## 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 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. The Supreme Court in Patel held that restraint of trade clauses is *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 of Zambia (especially an engineer, as it was in this case), is 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 prohibited. It therefore follows that any restraint whose sole purpose is to prevent an employee from 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 expressly make provision for the protection of confidential information. However, an employee does have a common law duty of good faith that encompasses treating and maintaining as confidential all information, communications and documents received in their capacity as an employee and relating to their duties.

**THE RETIREMENT AGE IS 60**

# ZIMBABWE

| | |
|---|---|
| Official language(s): | English, Shona and Ndebele |
| Population (approx.): | **16.63 million** |
| Unemployment rate (2024): | **Unknown as the country is hugely reliant on the informal sector, however it is estimated to be approximately 9.4%** |
| 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 Zimbabwe, 1979
- Labour Act (Chapter 28:01) (Labour Act)
- Cyber and Data Protection Act (Chapter 12.07) (Cyber and Data Protection Act)
- Manpower Planning and Development Act (Chapter 28:02) (Manpower Planning and Development Act)
- Zimbabwe Gender Commission Act (Chapter 10:31)
- Minimum Wage Regulations,1996 (Minimum Wage Regulations)
- Statutory Instrument 15 of 2006

### Regulatory rating

*Heavily regulated.*

**Simon Sadomba**
Partner

# Gill, Godlonton & Gerrans Legal Practitioners

Gill, Godlonton & Gerrans Legal Practitioners is one of Zimbabwe's oldest and largest law firms, which was established in 1912 and is based in Harare. The firm is ranked Tier 1 for General Business Law by Chambers Global.

It offers comprehensive legal services across sectors including energy, mining, corporate and commercial law, labour, conveyancing, civil litigation, intellectual property, and insolvency. The firm has played a key role in major infrastructure and power projects and advises a diverse clientele ranging from multinationals to individuals. With a strong team of experienced practitioners, the firm is known for its depth, expertise, and client-focused approach.

**Contact:** ssadomba@ggg.co.zw

## TRENDS

### General

Large corporates and non-governmental organisations are increasingly integrating environmental, social and governance (ESG) principles, including workplace diversity, mental health and well-being programmes and sustainable labour practices.

Labour law reforms and compliance trends include ongoing discussions about updating the Labour Act to:

- strengthen dispute resolution;
- address digital employment realities; and
- balance worker and employer rights more clearly.

### The introduction of artificial intelligence in the workplace

Adoption of artificial intelligence is still in its early stages and there is no legal and regulatory framework in the employment context yet.

### Data protection and privacy

Due to the enforcement of the Cyber and Data Protection Act by the Postal and Telecommunications Regulatory Authority of Zimbabwe there is a growing trend of companies drafting internal data privacy policies to ensure compliance and mitigate liability.

### Remote working and its implications for the payment of taxes where employees work from another jurisdiction

There is no specific legislation pertaining to working remotely, but standard labour rights still apply. Tax implications will therefore be determined by whether or not there is a double taxation agreement between Zimbabwe and the country in which the remote worker is based.

**What statutory payments is an employer required to make to the government in relation to employees, including deductions from employees' salaries and employer contributions, such as unemployment insurance to cover periods of unemployment?**

Employees and employers have payment obligations to the Government.

Employees are required to make the following payments:

- Pay-As-You-Earn (PAYE): Income tax deducted at source.
- National Social Security Authority (NSSA) contributions, deducted at 4.5% of gross salary (shared between employer and employee at 4.5% each for pension).
- AIDS Levy: 3% of PAYE liability.

Employer contributions:

- NSSA: 4.5% contribution toward the National Pension Scheme.
- Workers' Compensation Insurance Fund (WCIF): Employer contribution for workplace injury coverage.

There is no unemployment insurance scheme in Zimbabwe similar to other countries. Terminated employees may therefore seek recourse through retrenchment benefits or negotiated severance payments.

**What legislative frameworks exist to support workforce skills development, including strategies for upskilling, learnership provisions, financing for skills development, and the regulation of employment services?**

The key legislative instrument in Zimbabwe is the Manpower Planning and Development Act, which governs training levies and promotes technical/vocational education. Employers may be required to contribute to the Zimbabwe Manpower Development Fund, whose mandate is to finance the development of critical and highly skilled manpower in Zimbabwe.

**What are the legal requirements concerning trade unions and worker organisations, including registration obligations, organisational rights, and entitlements to represent employees in the workplace?**

*Legal framework*

Labour rights are guaranteed under section 65 of the Constitution of Zimbabwe, including the right to form or join trade unions of the employees' choice.

The Zimbabwe Labour Act governs:

- The registration of trade unions via the Registrar of Labour.
- Organisational rights such as:
  - collective bargaining;
  - representation in disciplinary hearings;
  - rights to access the workplace; and
  - general protection of labour rights.

*Entitlements*

- registered unions may represent employees in wage negotiations and in all matters affecting employees at the workplace;
- workers may not be victimised for union membership; and
- works councils (a body at the workplace comprising management and employee representatives and that has equal representation from both parties) must include worker representatives.

**What affirmative action obligations do employers have under the law, and what measures must they implement to ensure compliance?**

While there is no stand-alone affirmative action statute, the following apply:

- Zimbabwe Labour Act which prohibits discrimination based on race, gender, disability, etc.; and
- Zimbabwe Gender Commission Act, which supports workplace gender equity.

## HIRING DECISIONS

### Pre-hire checks

**May employers conduct pre-hire checks?**
Employers may conduct pre-hire checks, including:

- criminal record checks;
- qualification verification;
- references; and
- medical fitness (particularly for safety-sensitive roles).

### Hiring options

**What hiring options are available to employers?**
Employers may engage workers through:

- permanent contracts;
- fixed-term contracts;
- casual contracts (subject to statutory limits);
- apprenticeship contracts; or
- independent contractors (non-employees).

**Is there a concept of dual employment or deemed employment in Zimbabwe? In what instances would this apply?**
Zimbabwean law does not define "*dual employment*" directly. Therefore, it is not specifically outlawed and depends on the contract between the employer and the employee.

Deemed employment could arise where an independent contractor operates under conditions resembling employment, which include subordination to the employer. In such cases, the courts may reclassify the relationship as employment if the issue of employment is in dispute.

### Immigration

**Do foreign employees require permits to work and which visas may be obtained to allow foreigners to work?**
Foreign employees must obtain either a work permit or a visa through the Department of Immigration.
The options include:

- Temporary employment permit (TEP), which is valid for a maximum of five years.
- Business visa, which is valid for 37 days.
- Investor permit, which is valid for a year.
- Study permit (with restricted work rights, e.g. the foreign employee may serve as an apprentice).

**Are there any limitations placed on employers' discretion to determine new hires?**
Hiring must be done in compliance with anti-discrimination laws.

## CONDITIONS OF EMPLOYMENT

**Are contracts of employment required?**
Contracts of employment are required because they are the main foundation of the relationship between an employer and employee and outline the terms and conditions of employment between an employer and an employee. It creates a legally enforceable employment relationship between the parties.

**Are there any formality requirements attached to employment contracts, eg written format and/or signed?**
Written and oral contracts are recognised by law as long as it can be established that an employee-employer relationship exists between the parties. Where a contract is in written form, it usually specifies the following particulars:

- the name and address of the employer;
- job title;
- the period of time, if limited, for which the employee is engaged;
- hours of work;
- the terms of probation, if any;
- the terms of any employment code;
- particulars of the employee's remuneration, its manner of calculation and the intervals at which it will be paid;
- particulars of any bonus or incentive production scheme;

**EMPLOYERS MAY CONDUCT PRE-HIRE CHECKS.**

- periods of annual leave, sick leave, maternity leave, paternity leave and holiday entitlement, together with details of payments made in respect of such periods;
- particulars of any other benefits provided under the contract of employment;
- period of notice required for termination of contract; and
- date of termination of employment (if applicable).

**Are zero-hour contracts permissible (contracts without a minimum set of working hours or any basic salary undertaking)?**
Zero-hour contracts are not specifically regulated and may be characterised as unfair labour practices where their application infringes certain provisions of the labour legislation framework.

**EMPLOYEES ARE ENTITLED TO AT LEAST 30 CALENDAR DAYS OF ANNUAL LEAVE**

## Probation

**Can a probation period be used, and if so, is there a maximum prescribed period of probation?**
Probationary periods are permitted in a contract of employment. In Zimbabwe, the period is a single non-renewable period within which the employer evaluates the employee's performance and suitability for employment before confirming their appointment. If the employer does not wish to confirm the employee in its employment, it is entitled to terminate the employee's employment.

**Maximum probation periods vary based on the type of employment and are as follows:**
- **One day:** For casual or seasonal work.
- **Three months:** For all other employment contracts.

## Minimum employment rights

**Are any employees excluded from minimum employment rights?**
While all employees enjoy and are protected by employment rights, the minimum or basic employment rights depend on the sector under which the employees fall. Employees covered by the Constitution or the Public Service Commission, and members of the disciplined forces, are not under the jurisdiction of the Zimbabwe Labour Act. Rather, their employment rights are governed by other legislative instruments, which may not necessarily have the minimum rights specified in the Labour Act and may have their own minimum employment rights.

**Is there a minimum wage requirement?**
The minimum wage in Zimbabwe varies by industry and sector, as there is no single national minimum wage applicable across all sectors. Wages are negotiated via National Employment Councils (NEC) and if no NEC applies, the Government may gazette a general minimum for a certain industry from time to time.

**What are the standard/maximum working hours? Are there prescribed minimum resting periods during the normal working day/week?**
In Zimbabwe, the standard workday is eight hours, amounting to 40 hours per week, and during the working day employees are entitled to rest breaks. Employees have the right to 24 consecutive hours of rest each week. For non-shift workers, this 24-hour break usually falls over the weekend

**What are the minimum requirements relating to overtime?**
An employer can only require an employee to work overtime if the employee has consented. An employer must pay an employee at least 1.5 times the employee's usual wage for overtime worked or grant the employee paid time off.

**What are the minimum requirements relating to annual leave?**
Employees are entitled to at least 30 calendar days of annual leave for each year of continuous service after serving the same employer for a year. The accrual rate is monthly, i.e. 2.5 calendar days of leave per month of continuous service. Unused leave can be carried over and if the employment contract is terminated before an employee has used all their leave days, the employer must pay them for any accrued but not used leave days. Public holidays and sick leave do not count as part of annual leave if they fall within the scheduled leave period.

**What are the minimum requirements relating to sick leave?**
Sick leave is granted to an employee who is injured or ill or undergoing medical treatment not occasioned by failure to take reasonable precaution. It is granted for an aggregate of 90 calendar days on full pay per year only upon provision of a certificate signed by a registered medical practitioner. Leave may be extended to 90 more days on half pay (if the medical practitioner has a reasonable expectation that they will be able to resume their work duties). After an aggregate of 180 days for the year, an employment contract may be terminated by the employer on the basis of the ill health of the employee.

**What are the minimum requirements relating to parental leave, and does it apply to both parents or only mothers?**
Paternity leave is not provided for in Zimbabwean legislation. It is, therefore, discretionary.

Maternity leave is set at 98 days on full pay to a female employee (upon the provision of a certificate of pregnancy confirmation signed by a registered medical practitioner). Maternity leave cannot commence earlier than 45 days or later than 21 days before the expected date of delivery. It is limited to three maternity leave applications on full pay (beyond this, it may be unpaid unless agreed otherwise) with at least 24 months between periods of maternity leave. Normal benefits and entitlements, including rights to seniority, advancement and accumulation of pension rights, will continue uninterrupted during maternity leave. Employees who are breastfeeding are permitted breaks for one to two hours per day for six months.

**What are the minimum requirements relating to family responsibility leave (if any)?**
This may be granted as special leave on full pay for 12 days per year and cannot be carried over to the following year, and may not be encashed upon termination of employment.

**Are employees automatically entitled to bonus payments?**
Employees in Zimbabwe are not automatically entitled to bonus payments. The Labour Act and Minimum Wage Regulations do not mandate employers to pay bonuses. Bonus payments are generally discretionary and depend on the employer's decision and can be influenced by factors like performance and the company's financial situation.

## Changing terms and conditions of employment

**Are employees automatically entitled to periodic increases, alternatively how do the parties normally achieve consensus on increases?**
This will depend on the terms and conditions of the contract of employment or the company policy. Where the aforementioned do not automatically entitle employees to increases, collective bargaining agreements may govern increases.

**Can employment terms be changed without achieving agreement with the employees?**
Employers cannot unilaterally change an employee's employment terms without the employee's agreement. The contract of employment defines the terms and conditions of work, and any changes require mutual consent. While changes may be proposed and negotiated, they cannot be imposed without the employee's agreement.

**Are employees commonly represented in their interactions with employers relating to changes to employment terms?**
It is common for employees to be represented in interactions relating to changes to employment terms. They are usual represented by workers' committees, trade unions or legal representatives.

**COLLECTIVE BARGAINING AGREEMENTS MAY BE RESPONSIBLE FOR INCREASES.**

## 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 for work-related injuries or diseases under the NSSA' WCIF. Compensation may include medical expenses, temporary or permanent disability benefits, funeral grants and death benefits for dependents.

### Return to work

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

There is no statutory obligation under Zimbabwean law compelling employers to reintegrate workers post-recovery. However, labour principles encourage reintegration unless the employee is medically declared unfit. If the employee can resume work, termination due to incapacity without proper medical assessment may be considered an unfair labour practice.

### 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 statutory obligation to provide medical aid for non-workplace related issues. However, some collective bargaining agreements, contracts or company policies may impose such obligations. Employers may voluntarily offer medical aid as part of an employee's benefit package.

## Taxation

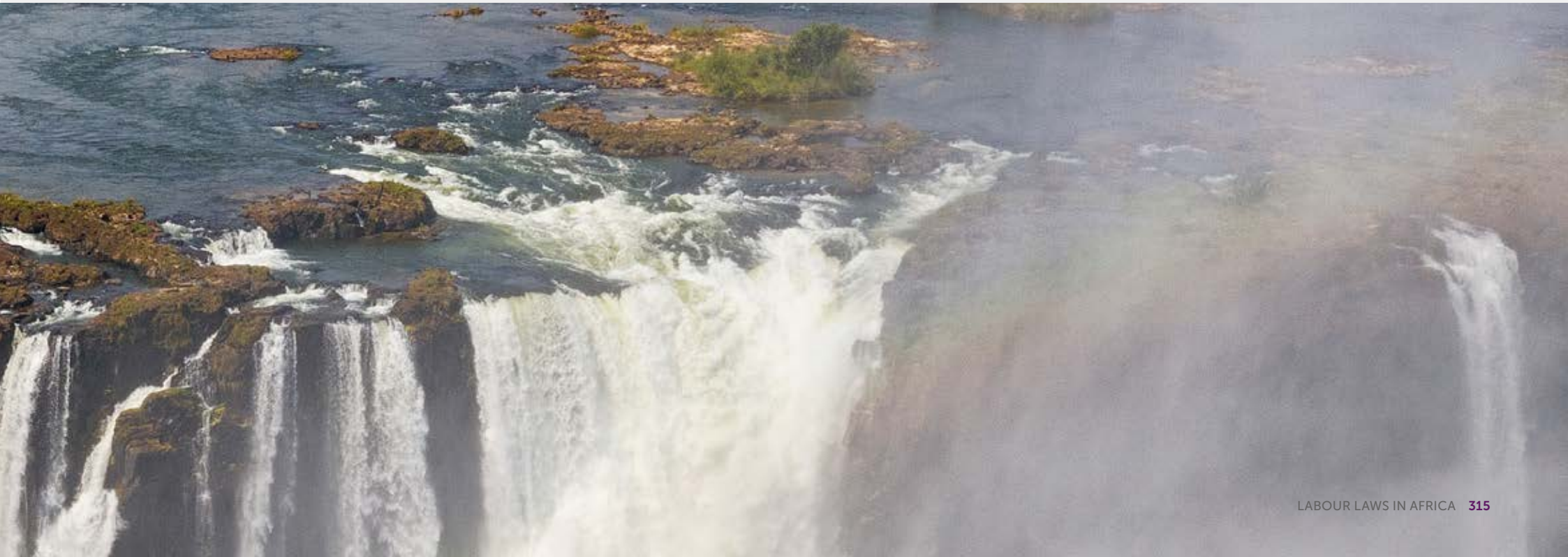
**What are an employer's obligations in respect of employee income tax, and what are the maximum personal tax rates that are applicable?**

Employers must deduct PAYE income tax from employees' salaries and remit it to the Zimbabwe Revenue Authority (ZIMRA) monthly. They must also submit monthly and annual tax returns (e.g. ITF16, ITF263).

**Do employees who work remotely from a foreign jurisdiction and pay taxes in their country of residence, require a Zimbabwe work permit to render services to a Zimbabwean entity?**

If an employee works exclusively from abroad and pays taxes there, they do not need a Zimbabwean work permit. However, their status as an employee or independent contractor must be clear for tax and legal compliance purposes.

**THE RETIREMENT AGE IS 60**



### Other social benefits

**What other employee social benefits must the employer either contribute to or deduct from employee contributions?**
Employers contribute to or deduct for the NSSA Pension Scheme as stated above. They may also contribute to WCIF or the Manpower Development Fund levy.

## DATA PRIVACY

**What data privacy obligations (if any) rest on employers in respect of their employees?**
Data privacy obligations are governed by the Cyber and Data Protection Act, which enjoins employers to secure employee data, obtain consent where necessary before processing the data, and avoid unauthorised access or sharing of the personal data.

## BUSINESS TRANSFERS

**Are employees automatically transferred to a new employer in the event of transfer of a business as a going concern?**
Yes. Section 16 of the Labour Act provides that whenever a business or undertaking is transferred as a going concern, the employment of the employees, unless lawfully terminated, is deemed to be transferred to the transferee on terms and conditions which are not less favourable than those which applied immediately before the transfer and the continuity of employment is not deemed to have been interrupted.

**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 requires that employees be fully informed and consulted before the transfer. This may be done at a works council level. A works council is a body at the workplace comprising management and employee representatives and that has equal representation from both parties. However, it does not mean the employer is obliged to follow the recommendations from the employees.

**Joint and several liability for employers?**
Employers attract liability where their employee commits a delict within the nature and scope of their employment.

**Is it possible to change terms and conditions of employment in the context of a business transfer?**
No. Terms and conditions of employment cannot be unilaterally altered without employee consent in any context.

## TERMINATION OF EMPLOYMENT

**What are the statutory obligations and procedures for terminating a contract of employment?**
Employment contracts can be terminated by:

- written mutual agreement between the parties;
- retrenchment;
- resignation;
- expiration of a fixed-term contract of employment;
- retirement; or
- dismissal arising from a material breach of the employment contract.

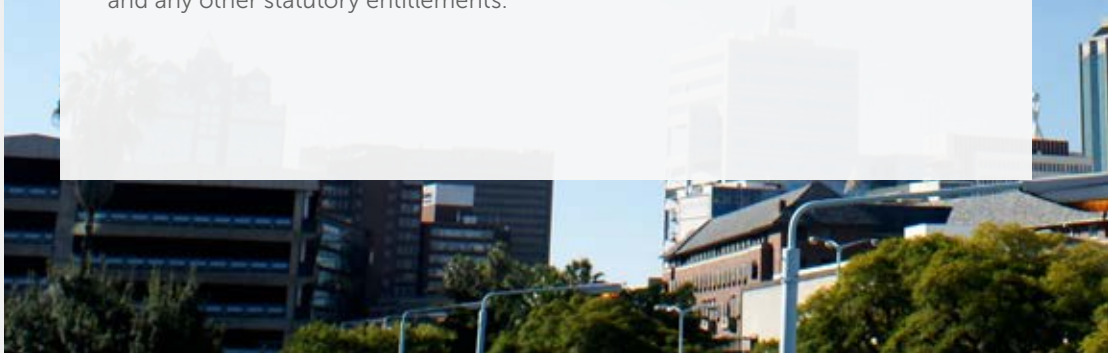
### Dismissals

An employer is entitled to dismiss an employee where the employee has committed an act of misconduct that warrants dismissal. Acts of misconduct are provided either in the employment code or in terms of Statutory Instrument 15 of 2006. The employee must be subjected to disciplinary action to ascertain the commission of the alleged offence. An employee who has been dismissed for misconduct is entitled to their accrued salary up to the termination date, unused leave days and any other statutory entitlements.

An employer may retrench employees for operational necessities arising from the economic, technological, structural or similar needs of the employer. The employer can implement retrenchments by notifying and consulting the relevant works council or NEC, or the Retrenchment Board. After consultation with employees, the Retrenchment Board will consider issues such as the reasons for retrenchment, measures to avoid retrenchment and alternatives to retrenchment that were considered and will make recommendations to the Minister of Labour in certain cases. The minimum statutory retrenchment package is one month's salary for each year of service.

Notice periods to terminate an employment contract, as provided by statute, are:

- For contracts exceeding two years or without a limit: three months.
- For contracts exceeding one year but less than two years: two months.
- For contracts exceeding six months but less than one year: one month.
- For contracts exceeding three months but less than six months: two weeks.
- For contracts for less than three months or for casual/seasonal labour: one day.



## Termination for misconduct

**What fair process requirements exist?**

1. Existence of a valid code of conduct which defines the conduct as misconduct.
2. Written notice of misconduct stipulating the nature of the misconduct, facts in support of the alleged misconduct and the employee's rights (e.g. right to be heard, to representation).
3. A disciplinary hearing must be held before any dismissal and it must be:

- impartial (conducted by someone not directly involved in the incident – this may be an internal or external chair);
- held within a reasonable time;
- open to the employee's representation (e.g. co-worker, union rep); and
- conducted in a language the employee understands.

**AN EMPLOYER MAY RETRENCH EMPLOYEES FOR OPERATIONAL NECESSITIES**

4. The employee's right to respond must be preserved by permitting them to have:

- adequate notice of the charges and the date for the hearing;
- a full opportunity to state their case;
- the right to call witnesses or cross-examine the employer's witnesses;
- access to any evidence against them; and
- making submissions in mitigation before a penalty is imposed.

5. After the hearing, a written outcome must be issued, stating:

- whether the misconduct was proven;
- what the penalty is, if any (e.g., warning, dismissal); and
- reasons for the decision.

6. The employee must be informed of their right to appeal the decision internally. If dissatisfied, the employee can refer the matter to a labour officer or Labour Court, depending on the nature of the dispute.

**What substantive fairness requirements exist?**

Substantive fairness in dismissing an employee for misconduct requires that the alleged misconduct be a recognised offence under the law or the employer's code of conduct, and that it undermines the trust and confidence between the employer and employee. The employer must also have a valid and consistently applied policy or rule that the employee violated.

**What notice periods are applicable?**
The notice periods for the disciplinary proceedings will depend on the code of conduct or employment contract.

**Are any termination benefits payable in the event of a dismissal for misconduct?**
An employee who has been dismissed for misconduct is entitled to accrued salary up to the termination date, unused leave days and any other statutory entitlements.

**THE NOTICE PERIODS FOR THE DISCIPLINARY PROCEEDINGS WILL DEPEND ON THE CODE OF CONDUCT OR EMPLOYMENT CONTRACT.**

**What remedies are available to employees?**
Reinstatement with full benefits as if the relationship had never been terminated. If the employer can prove that the employee had taken up alternative employment, the benefits will be paid from the time of reinstatement up to the point alternative employment was undertaken. Or, the employer can seek to convince the courts that the employee could have mitigated their circumstances by looking for alternative employment of comparable status, on the strength of their skill, qualifications and experience and availability of job opportunities. Alternatively, employees may be paid damages *in lieu* of reinstatement as advanced by the employer.

**Is third-party approval for termination/ termination documents required?**
There is no third-party approval needed.

## Termination for incapacity

**What fair process requirements exist?**

***Step 1: Medical Evaluation:***

- Obtain an independent medical report confirming incapacity.
- Consider any recommendations for rehabilitation or alternative duties.

***Step 2: Consider Alternative Work:***

- Explore if the employee can be reassigned to a less demanding role.

***Step 3: Consultation:***

- Engage the employee or their representative to assess if they can take up the new role.
- If the employee cannot take up any new role, the employer may consider mutual termination of the employment contract or retrenchment.

**What substantive fairness requirements exist?**
In the event that mutual termination is preferred by the employer as the solution, substantive fairness requirements are as follows:

- the employee must not be coerced; and
- the employee must be paid all his terminal benefits which shall be stated below.

In event that retrenchment is preferred by the employer as the solution to the incapacity, the employer must follow the substantive requirements related to retrenchment.

**What notice periods are applicable?**
Notice periods to terminate employment contracts as provided by statute are:

- For contracts exceeding two years or without a limit: three months.
- For contracts exceeding one year but less than two years: two months.
- For contracts exceeding six months but less than one year: one month.
- For contracts exceeding three months but less than six months: two weeks.
- For contracts for less than three months or for casual/seasonal labour: one day.

These periods will afford an employee the opportunity to make representations in response to the contemplated termination.

**Are any termination benefits payable in the event of a dismissal for incapacity?**
Upon lawful termination for incapacity, the employee is entitled to receive their salary up to the date of termination, cash *in lieu* of accrued but unused leave days, pension/ retirement fund benefits (if applicable) and severance pay may be considered, particularly in long-service cases or where incapacity was work-related (e.g. injury or occupational disease under NSSA).

**What are the dispute resolution mechanisms?**

**1. Conciliation**

Dispute referred to a labour officer for mediation.

**2. Arbitration**

If conciliation fails, matter proceeds to arbitration (written award).

**3. Labour Court**

Appeals on questions of law or the gross unreasonableness of an arbitration award.

**4. Supreme Court**

Appeals on questions of law against a decision made by the Labour Court

If the termination is procedurally or substantively unfair, the employee can follow the dispute resolution process and/ or claim:

- reinstatement; or
- damages *in lieu* of reinstatement.

**Is it permissible to offer employees a voluntary separation package during a redundancy process? Does this undermine the legitimacy of the retrenchment/ redundancy process?**
It is permissible in order to avoid lengthy retrenchment consultations and it does not undermine the legitimacy of the process if it is offered voluntarily with proper disclosure and documentation.

**Is third-party approval for termination/ termination documents required?**
There is no need for third-party approval.

**How is severance pay calculated?**
The minimum severance package is one month's salary for each year of completed service. This can be prorated.

**Are any termination benefits payable in the event of voluntary resignation by an employee?**
Accrued salary up to the termination date and accrued unused leave days.

**Are any termination benefits payable in the event of retirement?**
Upon retirement, an employee upon retirement shall be entitled to pension or retirement fund benefits (NSSA/private), payment for accrued leave days, and any contractually agreed retirement package.

## RETIREMENT

**What is the normal retirement age?**
The normal retirement age in terms of the NSSA Pension Scheme is 60.

## POST-TERMINATION RESTRAINTS

### Enforceability of non-compete provisions

**Can contractual non-compete provisions be enforced?**
Non-compete provisions are enforceable where they protect legitimate, recognised business interests and do not conflict with public policy. Non-compete provisions are not prohibited by the Labour Act. The courts have held that non-competes are unenforceable where they are overbroad and unreasonable. An overbroad non-compete is one that merely prevents a former employee from competing with an employer using the general skill and experience acquired during their employment. The courts reason that an employee remains entitled to use any personal skill or experience acquired while working for a previous employer because of the right of an individual to free economic activity, which is enshrined in the Constitution as a fundamental right. In recent case law, the term of a non-compete was reduced from five years to three years based on it being unreasonably long.

### Confidentiality and trade secrets

**What protections are offered to employers in respect of their confidential information/trade secrets?**
In the absence of any restraint covenant/contract/agreement, any claim against an ex-employee must be based on unlawful competition. To succeed, the employer must establish all the requisites of Aquilian liability, including proof that the employee committed a wrongful act.

**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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