

LABOUR ACT, 2003 (ACT 651)

AN ACT to amend and consolidate the laws relating to labour, employers, trade unions and industrial relations; to establish a National Labour Commission and to provide for matters related to these.

Contents:

1. General Application
2. Protection of Employment
3. Annual Leave with Pay
4. Hours of Work
5. Rest Hours
6. Employment of Persons with Disability
7. Employment of Women
8. Employment of Young Persons
9. Fair and Unfair Termination of Employment
10. Protection of Remuneration
11. Special Provisions on Temporary Workers and Casual Workers
12. Forced Labour
13. Occupational Health, Safety and Environment
14. Unfair Labour Practices
15. National Labour Commission

1. General Application

This Act applies to **all** workers and employers whether public or private, except;

- The Armed Forces
- The Prisons Service
- The Police Service and
- The Security and Intelligence Agencies

2. Protection of Employment

- The employer has the right to employ, discipline, transfer, promote, terminate employment, cease operations, determine what its products will be etc.
- The employer has the duty to provide work, pay agreed remuneration, ensure safety and health of the worker, develop the worker, provide the worker with a contract of employment, protect the interest of workers etc.
- The rights of a worker include to work in satisfactory, safe and healthy conditions; receive equal pay for equal work; have rest; form or join a union.

- The worker has the duty to work conscientiously, enhance productivity, exercise due care in execution of work, protect the interest of the employer and take proper care of the employer's property.
- A contract of employment which is 6 months or more in aggregate must be in writing.
- Within 2 months of employment, particulars of the main terms of employment must be provided to an employee, and both parties must sign it.
- Employment may be terminated on the following grounds,
 - ✓ Mutual agreement
 - ✓ Ill-treatment or sexual harassment of worker
 - ✓ Death of employee
 - ✓ Medical health based on medical examination and certification of medical unfitness for work
 - ✓ Inability of worker to carry out work due to sickness, accident, incompetence, proven misconduct
- Employment contracts can be terminated by either party so long as the appropriate notice period is given. For contracts that are 3 years or more, the notice period must be at least 1 month. If the contract is less than 3 years, the notice period must be at least 2 weeks. Weekly contracts must have at least 7 days notice before termination. Notices must be in writing. Monetary payments may be made in substitution of notices of termination.
- On termination, any remuneration earned, delayed payments, prorated benefits are due to the worker not later than the date of expiration of the notice.
- **Where a collective bargaining agreement expresses terms that are more beneficial or superior to the provisions in the Act, those terms are to take precedence.**

3. Annual Leave with Pay

- A worker is entitled to not less than 15 working days paid leave in every calendar year of continuous service or for the equivalent of 200 days in a year.
- Annual leave entitlement is not to be affected by public holidays, sick leave covered by medical certificate, pregnancy and confinement or civic duty with permission.
- Where a worker is suspended due to a disciplinary process and is later reinstated, his or her leave entitlement must be restored.
- An agreement to forgo an employee's leave entitlement is unlawful and void.
- The provisions on paid leave are not applicable in enterprises in which only family are either the employers or employees.

4. Hours of Work

The following are the permitted hours of work under the Labour Act:

- A maximum of 8 hours a day or a maximum of 40 hours a week.

- Hours of work per day may be adjusted to be shorter or longer but cannot exceed 9 hours a day or a total of 40 hours a week.
- Where the nature of work requires longer hours of work, the average hours per day over a year must not exceed 8 hours a day and the hours per day cannot exceed 10 hours.
- All hours worked beyond those set in line with the prescribed hours of work must be paid for as overtime and a worker must not be asked to do overtime unless the undertaking has fixed overtime rates.
- Overtime must only be done in emergencies that require that the overtime is done to prevent threat to life and property and where an enterprise cannot survive without overtime.
- Shift work must be organized to conform with the 8 hours a day or 40 hours a week rule.
- In exceptional situations such as accident threatening lives or the enterprise's existence, overtime may come without pay.

5. Rest Hours

- A worker is entitled to at least 30 minutes break in each workday as part of the hours of work where the work is continuous.
- A worker is entitled to at least one-hour break in each workday, which does not form part of the hours of work for the day where the workday is divided in two.
- A worker is entitled to 48 hours of continuous rest period in every 7 days of normal work hours.
- **Rest hours as prescribed in this part, do not apply to domestic workers.**

6. Employment of Persons with Disability

- Persons with disability are entitled to special incentives when engaged in business.
- Employers are entitled to special incentives when they employ persons with disabilities.
- Termination of employment of a person with disability should not be done with less than a month's notice.
- A person's employment must not come to an end because they become disabled unless no corresponding job can be assigned for the residual capacity.

7. Employment of Women

- A woman who is pregnant should not be made to work between the hours of 10pm and 7am unless she consents to it.
- A pregnant woman or nursing mother whose child is less than 8 months should not be made to work overtime unless she consents to it.
- After the fourth month of pregnancy, a woman should not be posted to a place outside her place of residence if a medical practitioner deems it detrimental to her health.

- A pregnant woman is entitled to at least 12 weeks of paid maternity leave after her period of confinement on production of a medical certificate, which may be extended for a further 2 weeks under some circumstances and is not counted as part of sick leave or annual leave under the law.*
- A nursing mother is entitled to interrupt her workday for an hour to nurse her baby. This interruption is counted as part of the paid hours of the workday.

8. Employment of Young Persons

- A young person should not be employed in physically or morally hazardous work including underground mining work. This is an offence that attracts a fine of GHS1, 200.
- Before employing a young person, an employer must first obtain a medical certificate from a certified medical practitioner that the young person is in good health and medically fit to work.
- Employers must keep a register of the names, dates of birth or apparent ages of young persons in their employment.
- “young person” means a person of or above eighteen years of age but below twenty-one years.

9. Fair and Unfair Termination of Employment¹

- It is fair to terminate a person’s employment for;
 - ✓ Incompetence
 - ✓ Lack of qualification for work for which an employee is employed
 - ✓ Proven misconduct
 - ✓ Redundancy
 - ✓ A legal restriction
- It is unfair to terminate a contract of employment because
 - ✓ A worker has joined, refused to join, intends to join a trade union
 - ✓ A worker has filed a complaint or participated in any proceedings against an employer
 - ✓ Of the gender, race, colour, ethnicity, religion, creed, social, political, economic status
 - ✓ Of pregnancy or absence on account of maternity leave
 - ✓ Of disability
 - ✓ Temporary illness or injury certified by a medical practitioner
 - ✓ Lack of qualifications that were not required at time of employment
- It is unfair termination of a worker’s employment if a worker terminates his/ her employment with or without notice due to the ill-treatment of a worker by an employer.
- It is unfair termination of a worker’s employment if a worker terminates his/ her employment due to failure of an employer to address repeated complaints of sexual harassment.
- Termination of a worker’s employment may be unfair if the employer fails to prove that the termination was fair or was made in accordance with lawful procedure.

¹ not applicable to contract workers, workers on a reasonable period of probation, casual or by-day workers

- Remedies for unfair termination of employment may include the right to make a complaint to the National Labour Commission (NLC), reinstatement of a worker, re-employment of a worker and compensation.
- Redundancies (the termination of employment arising from the introduction of major changes in production, program, organization structure, technology);
 - ✓ Must be notified to the Chief Labour Officer and the relevant trade union not later than 3 months before the changes take place.
 - ✓ Must be preceded with consultation with the trade union on measures to be taken.
- Where occurrences such as amalgamations or re-organizations that lead to the close down of work so that a worker loses employment or suffers a diminution in his/ her terms and conditions of service, the worker is entitled to redundancy pay, the terms of which are subject to negotiation.

10. Protection of Remuneration

- All workers are entitled to equal pay for equal work without distinction.
- No deductions are to be made on a worker's pay unless it is lawful or agreed with the worker.
- Workers are entitled to be paid for public holidays.

11. Special Provisions on Temporary Workers and Casual Workers²

- "casual worker" means a worker engaged on a work which is seasonal or intermittent and not for a continuous period of more than six months and whose remuneration is calculated on a daily basis. (s. 78)
- The contract of employment of a casual worker need not be in writing.
- A casual worker is entitled to equal pay for equal work; overtime pay where overtime has been worked, full pay on every day on which work has been attended even if the weather or some circumstances prevent work to be done; to access medical facilities available to workers equally.
- "temporary worker" means a worker who is employed for a continuous period of not less than one month and is not a permanent worker or employed for a work that is seasonal in character. (s. 78)
- If a temporary worker is employed by the same employer for a continuous period of 6 months or more, he/ she shall be treated as a permanent worker.
- The remuneration of a temporary or casual worker is to be calculated;
 - ✓ if work is carried out only on weekdays as the daily wage multiplied by 27 days a month. (i.e. daily wage x 27 days).
 - ✓ if work is carried out on every day of the week as the daily wage multiplied by 365 days divided by 12. (i.e. daily wage x 365)

² not applicable to pieceworkers, part-time workers, sharecroppers, apprentices, seagoing workers, persons who work less than an average of 24 hours a week

12. Forced Labour

- It is an offence to exact or benefit from forced labour.
- Forced labour is work exacted under threat of penalty and not given voluntarily. It does not include
 - ✓ Labour in the disciplined forces or services carried out as one's duties.
 - ✓ Labour required because of a sentence or order of a court.
 - ✓ Labour reasonably required as part of communal labour or civic obligations.
 - ✓ Labour required when the country is at war.

13. Occupational Health, Safety and Environment

- Employers are duty bound to ensure that every worker works under satisfactory, safe and healthy conditions. This includes preventing hazardous situations, providing information and instruction, providing separate toilet facilities for female and males, providing adequate supply of clean drinking water. It is an offence not to do so.
- Workers must use appliances and follow instructions for safety equipment. An employer will not be liable if a worker fails to do so.
- A worker has a right to remove him or herself from a hazardous situation at the workplace and a duty to report the situation to an immediate supervisor.
- A worker must not be forced to return to a hazardous work situation and cannot be terminated or dismissed or any remuneration withheld on account of this.

14. Unfair Labour Practices

- Unfair labour practices may be committed by both employers and employees/ workers. Unfair labour practices include;
 - ✓ Discriminatory practices
 - ✓ Intimidation
 - ✓ Interference by employers in trade union business, especially to exert undue influence
 - ✓ Practices by workers intended to interfere with the business of an employer that may result in financial loss
 - ✓ Carrying out trade union activities on the premises of an employer without the consent of the employer
- Complaints of unfair practices may be presented to the NLC

15. The National Labour Commission

- The Labour Act establishes the National Labour Commission as a dispute resolution mechanism for labour disputes.
- Labour disputes may be submitted to the NLC by workers, trade unions or employers.
- Disputes are settled through assisted negotiation, mediation or arbitration.

- Parties to a dispute may resort to strikes or lockouts when a dispute remains unresolved after ADR provided a written notice of 7 days is given to the NLC and other parties to the dispute.
- Strikes and lockouts are not allowed for workers and employers in operations deemed as 'essential services.' Essential services include areas in an establishment where an action could result in a particular or total loss of life or pose a danger to public health and safety and such other services as the Minister may determine.

THE POCKETLAW PROJECT