Termination of employment legislation digest

Country profile – Ghana

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Sources of regulation | Scope of legislation | Contracts of employment | Termination of employment | Dismissal | Notice and prior procedural safeguards | Severance pay | Avenues for redress | Further Information

Sources of regulation

Prior to 2003, the main sources of regulations relating to termination of employment in Ghana were the Industrial Relations Act, 299 of 1965, the Labour Decree of 1967, NLCD 157, as well as the Civil Service Act and the Civil Service Disciplinary Code Regulations, 1971, which regulated only State employees. In 1995, the idea to codify all the laws relating to labour was developed.

Extensive tripartite consultations gave rise to the Labour Act of 2003 (Act 651) (“LA”), which is now the main source of legislation relating to labour law and termination of employment. The adoption of the LA was aimed at consolidating the old laws on industrial relations, as well as bringing national legislation in conformity with the 1992 Constitution and ILO Conventions.

Common law is also a source of regulation, particularly relevant to wrongful dismissal.

Scope of legislation

The LA applies to all workers and employers, except the Armed Forces, the Police Service, the Prison Service and the Security and Intelligence Agencies specified under the Security and Intelligence Agencies Act 1996 (Act 526) (sec. 1, LA).

The provisions of Part VIII "Fair and Unfair Termination of Employment" of the LA do not apply to the following categories of workers:

- workers engaged under a contract of employment for specified period of time or specified work;
- worker serving a period of probation or qualifying period of employment of reasonable duration determined in advance; and
• workers engaged on a casual basis (sec. 66, LA).

Contracts of employment

The employment of a worker by an employer 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 secured by a written contract of employment (sec. 12(1), LA). The contract of employment must be done within a two-month period after the commencement of employment and express in clear terms the rights and obligations of the parties (sec. 13, LA).

There are several forms of employment contracts, which depend on the rate of worker’s remuneration (sec. 16, LA):

• month to month;
• week to week; or
• a contract determinable at will when the remuneration is other than monthly or weekly.

Termination of employment

A contract of employment may be terminated (sec. 15, LA):

• by mutual agreement between the employer and the worker;
• by the worker on grounds of ill-treatment or sexual harassment.

A worker’s employment is deemed to be unfairly terminated (constructive dismissal), if the worker terminates the contract of employment with or without notice to the employer because:

• of the ill-treatment of the worker by the employer, having regard to the circumstances of the case; or
• the employer has failed to take action on repeated complaints of sexual harassment of the worker at the work place (sec. 63(3), LA).

Dismissal

The termination of a worker’s employment by the employer is fair (secs. 15 and 62, LA):

• if the worker is unable to carry out his or her work due to sickness or accident and found on medical examination to be unfit for employment;
• if the worker is incompetent and lacks the qualification in relation to the work for which the worker is employed;
for proven misconduct of the worker;

• on the death of the worker before the expiration of the period of employment;

• due to legal restriction imposed on the worker prohibiting the worker from performing the work for which he or she is employed; or

• for economic reasons (redundancy).

Redundancy can take place when an employer contemplates the introduction of major changes in production, programme, organization, structure or technology of an enterprise that are likely to entail terminations of employment of workers in the enterprise (sec. 65, LA).

The employment of a worker cannot be unfairly terminated by the employer (sec. 63, LA). A worker’s employment is deemed terminated unfairly, if the only reason for the termination is:

• that the worker is a member of a trade union or intends to take part in trade union activities;

• that the worker seeks office as, or is acting or has acted in the capacity of, a workers’ representative;

• that the worker has filed a complaint or participated in proceedings against the employer involving alleged violation of the LA or any other enactment;

• the worker’s gender, race, colour, ethnicity, origin, religion, creed, social, political or economic status;

• that the worker is temporarily ill or injured and this is certified by a recognized medical practitioner;

• that the worker does not possess the current level of qualification required in relation to the work for which the worker was employed which is different from the level of qualification required at the commencement of his or her employment; or

• that the worker refused or indicated an intention to refuse to do any work normally done by a worker who at the time was taking part in a lawful strike, unless the work is necessary to prevent actual danger to life, personal safety or health or the maintenance of plant and equipment.

Moreover, a termination may be unfair if the employer fails to prove that:

• the reason for the termination is fair; or

• the termination was made in accordance with a fair procedure or the LA (sec. 63(4), LA).

The LA requires that a woman worker, on production of a medical certificate issued by a medical practitioner or a midwife indication the expected date of her confinement, be entitled to a period of maternity leave of at least twelve weeks in addition to any period of annual leave she is entitled after her period of confinement. The female worker is also entitled to additional leave of up to two weeks contingent upon assessment of certified medical practitioner of special circumstances in
pregnancy (sec. 57, LA). As such, the employer cannot unfairly terminate employment in the case of such female worker due to the pregnancy of the worker or the absence of such worker from work during maternity leave (sec. 63(2)(e), LA).

Every worker has the right to form or join a trade union of his or her choice for the promotion and protection of the worker’s economic and social interests (sec. 79, LA). As such, the employer cannot terminate the worker who has joined, intends to join or has ceased to be a member of a trade union or intends to take part in the activities of a trade union (sec. 63(2)(a), LA). Moreover, a person who discriminates against any person with respect to the employment or conditions of employment because that other person is a member or an officer of a trade union is guilty of unfair labour practice (sec. 127, LA). Furthermore, a person who seeks by intimidation, dismissal, threat of dismissal, or by any kind of threat or by imposition of a penalty, or giving or offering to give a wage increase or any other favourable alteration of terms of employment, or by any other means, seeks to induce a worker to refrain from becoming or continuing to be a member or officer of a trade union is guilty of unfair labour practice (sec. 127, LA). An employer may not employ any person to perform the work of a worker participating in a lawful strike, unless the work is necessary to secure essential minimum maintenance services at the enterprise (sec. 170, LA). As such, the worker has the right to refuse to do any work normally performed by the worker who is participating in a lawful strike except that the worker cannot refuse to perform if it is necessary to secure minimum maintenance services (sec. 170, LA).

The employment of a person, who suffers disability, cannot cease if his or her residual capacity for work is such that he or she can be found employment in the same or some other corresponding job in the same enterprise (sec. 50, LA). This search for corresponding job should take into account disabled person’s qualifications, physical condition, place of residence, and whether the transfer may worsen the conditions in which the person entered the employment (sec. 52(2), LA). However, if no such corresponding job can be found, the employment may be terminated by notice (sec. 51, LA).

**Notice and prior procedural safeguards**

A contract of employment may be terminated at anytime by either party giving to the other party:

- one month’s notice, or one month’s pay in lieu of notice, in the case of a contract of three years or more;
- notice of two weeks or payment in lieu in the case of a contract of less than three years; or
- seven days’ notice or payment in lieu in the case of a contract from week to week.

The day on which the written notice is given is included in the period of the notice. However, a contract of employment determinable at will by either party, may be terminated at the close of any day without notice (sec. 17, LA). Moreover, either party to a contract of employment may terminate the contract without notice, if that party pays to the other party a sum equal to the amount of
remuneration which would have accrued to the worker during the period of the notice (sec. 18(4), LA).

The legal provisions are not applicable where in a collective agreement there are express provisions, regarding the terms and conditions for termination of employment, which are more beneficial to the worker (sec. 19, LA).

As regards collective dismissals for economic reasons, the employer has to provide in writing to the Chief Labour Officer and the trade union concerned, not later than three months before the contemplated changes, all relevant information including the reasons for any termination, the number and categories of workers likely to be affected, and the period within which any termination is to be carried out. The employer must also consult the trade union concerned on measures to be taken to avert or minimize the termination, as well as measures to mitigate the adverse effects of any terminations on the workers concerned, such as finding alternative employment (sec. 65, LA).

As regards workers with disability, for whom no suitable job can be found in the enterprise, the employment may be terminated by notice, whose length cannot be shorter than one month (sec. 51, LA).

**Severance pay**

In case of dismissals for economic reasons (severance), where the worker becomes unemployed or where the worker suffers any diminution in the terms and conditions of employment (measured by past services and accumulated benefits), such worker is entitled to compensation (“redundancy pay”). The terms and conditions of redundancy pay are subject to negotiation between the employer and the worker or the trade union concerned (sec. 65, LA).

**Avenues for redress**

The main venue for redress in Ghana is the National Labour Commission referred to in the LA as the “Commission”. A worker who claims that his/her employer has unfairly terminated his/her employment may present a complaint to the Commission. If upon investigation of the complaint, the Commission finds that the termination of the employment is unfair, it may order the employer to:

- re-instate the worker from the date of the termination of employment;
- re-employ the worker, either in the work for which the worker was employed before the termination or in other reasonably suitable work on the same terms and conditions enjoyed by the worker before the termination; or
- order the employer to pay compensation to the worker (sec. 64, LA).

Furthermore, if the Commission finds that a person has engaged in an unfair labour practice, which involves the termination of employment of a worker, the Commission may, if it considers fit, make an order requiring the worker’s employer to:
• take such steps as may be specified in the order to restore the position of the worker; and
• pay to the worker a sum specified in the order as compensation for any loss of earnings attributed to the contravention (sec. 133, LA).

In general, the main functions of the Commission are as follows: to facilitate the settlement of industrial disputes, to settle industrial disputes, to investigate labour related complaints, specifically unfair labour practices and take such steps as it considers necessary to prevent labour disputes, to maintain a data base of qualified persons to serve as mediators and arbitrators, to promote effective labour co-operation between labour and management, and to perform any other function conferred on it under the LA or any other enactment. In order to maintain its credibility and independence in Ghana, the exercise of the Commission’s adjudicating and dispute settlement function cannot be subject to the control or direction of any person or authority (sec. 138, LA).

The Commission exercises the following powers:

• receives complaints from workers, trade unions, and employers, or employers’ organization on industrial disagreement and allegations of infringement of any requirements of the LA;
• requires an employer to furnish information and statistics concerning the employment of its workers and the terms and conditions of their employment in a form and manner the Commission considers necessary;
• requires a trade union or any workers’ organization to provide such information as the Commission considers necessary; and
• can notify employers and employers’ organizations or workers and trade unions in cases of contravention of the LA and direct them to rectify any default or irregularities (sec. 139, LA).

The Commission may also establish Regional and District Labour Committees, which perform in the respective region or district such of the functions of the Commission as assigned to it in writing by the Commission (sec. 144, LA).

Any dispute that concerns redundancy pay may be referred to the Commission by the aggrieved party for settlement. The decision of the Commission in such matters is final (sec. 65(5), LA).

The Commission, in respect of its proceedings, enjoys the same privileges and immunities pertaining to proceedings in the High Court (sec. 139(3)), LA. As such, in carrying out its powers and settling industrial disputes, the Commission has the powers of the High Court in respect of enforcing the attendance of witness and examining them on oath, affirmation or otherwise compelling the production of documents (sec. 165, LA). Therefore, where any person fails or refuses to comply with a direction or an order issued by the Commission under the LA, the Commission may make an application to the High Court for an order to compel that person to comply with the direction or order (sec. 172, LA)

The Commission also deals with labour disputes through mediation. If the parties fail to settle a dispute by negotiation within seven days after the occurrence of the dispute, either party or both parties by agreement may refer the dispute to the Commission and seek assistance of the
Commission for the appointment of a mediator. Where the parties agree to mediate and at the end of the mediation proceedings there is settlement of the dispute, the agreement between the parties as regards to the terms of the settlement is recorded in writing and signed by the mediator and the parties to the dispute. The settlement agreement is binding on all the parties, unless the agreement states otherwise. When at the end of the mediation proceedings, no agreement is reached, the mediator immediately declares the dispute as unresolved and refers the dispute to the Commission (sec. 154, LA).

A person aggrieved by an order, direction or decision made or given by the Commission may, within fourteen days of the making or giving of the order, direction or decision, appeal to the Court of Appeal (sec. 134, LA).

Further information

- ILO NATLEX Ghana
- National Labour Commission
- Judicial Service of Ghana