

Termination of the Employment Relationship in Uganda

Key Employer Obligations



1. Introduction

The employment relationship in Uganda is principally regulated by the Employment Act 2006 (“the Act”) and the contract of employment also known as a contract of service. The law regulates the rights and obligations of the parties namely employer and employee not only during the life of the employment contract but also upon its cessation. In this article, we address the different options for ending an employment relationship and the attendant legal obligations on the employer.

2. Termination

Termination marks the end of an employment contract. It may be ended by mutual agreement between the employer and employee or unilaterally finished by either of them. The Act envisions various circumstances for terminating an employment relationship as highlighted below.

a. Termination with notice or payment in lieu of notice

The Act allows an employer to terminate an employment contract by issuing an advance notice of termination or making a payment in lieu of the notice. Thus, an employee is entitled to be given an advance notice of termination or paid an advance salary instead of the notice. The notice period an employee is entitled to depends on the terms of the employment contract but the Act prescribes minimum notice periods below.

- There are no notice requirements for employees who have worked for less than six months.
- Two weeks’ notice for an employee who has worked for more than six months but less than one year.
- One month notice where an employee has worked between one year and five years.
- Two months’ notice where an employee has worked between 5 years and 10 years.
- Three months’ notice where an employee has worked for 10 years or more.

Uganda’s Industrial Court has stressed that an employer must provide reasons for termination to the affected employee. Thus, this provision does not give employers absolute authority to carry out terminations at will.

b. Termination by an employee who has been served a notice by the employer

Where an employee is served a notice of termination by the employer, he/she may terminate the contract of employment before the end of the notice period. There is however no express requirement in the Act for the employee to compensate the employer for the remainder of the notice period.

c. Expiration of the contract of employment

Where an employment contract is for a fixed period, it terminates upon the expiration of that period. The Industrial Court has explained that the employer does not have to provide reasons for termination of a fixed contract or issue an advance notice to the employee. See *Emau Jimmy and 5 Others vs. Ketrion Development Services Ltd (Labour Dispute Reference No. 179 of 2017)*. That said, care should be taken with the drafting of renewal clauses. Many issues arise where the employer seeks to terminate an employee’s contract which is stated to be renewable, whether the renewal is automatic or is dependent upon the occurrence of stated conditions.

d. Insolvency or bankruptcy of the employer

An employment relationship will terminate where the employer is declared bankrupt or in the case of corporate bodies, insolvent and wound up. In this case, the law deems the employment contract terminated after one month of the declaration of bankruptcy or insolvency. Wages and all other payments have priority over all other claims on the estate of the bankrupt or assets of the insolvent accruing for 26 weeks before the declaration of bankruptcy or winding up.

e. Sickness of the employees

Employees unable to perform duties due to sickness are entitled to full pay and all benefits and privileges of employment for the first month of sickness. But if the sickness persists, the employer is entitled to terminate the employment contract at the end of the second month.

f. Inability to pay wages

Where the employer is unable or refuses to pay wages, both the employer and the employee are entitled to apply to the Labour Officer to declare the contract terminated. Even in the face of such a declaration, the employer is obliged to make good any payment and other obligations pending up to the date of termination.

g. Unreasonable conduct by the employer

The employee is entitled to terminate an employment contract with or without notice if subjected to unreasonable conduct by the employer. The Act does not provide for what amounts to unreasonable conduct, so one can only assume that the test is a subjective one.

Nonetheless, the Industrial Court has pronounced itself on the question of unreasonable conduct on a number of occasions. In *Muyimbwa Paul vs. Ndeje University (Labour Dispute Reference No. 222 of 2015)*, the Court ruled that demotion of an employee without giving them an opportunity to be heard was unreasonable conduct. Similarly, in *Nyakabwa Abwooli vs. Security 2000 Ltd (Labour Claim No. 108 of 2014)* removal of instruments of an office without providing an alternative was held to constitute unreasonable conduct. The Industrial Court further explained that for conduct to amount to unreasonable, it must be a serious breach, illegal, injurious to the employee making it impossible for the employee to continue working.

h. Death of an employee

Death of an employee terminates an employment contract but the employer must pay to the deceased employee's estate any outstanding salaries and benefits at the time of the employee's death. If the employee died at the workplace or in transit to the workplace, the employer has additional obligations to notify the Labour Officer of the death and transport the deceased's body to its burial place.

i. Summary dismissal

An employer is entitled to summarily terminate an employment contract where the employee has fundamentally breached the terms of their employment. What amounts to fundamental breach is a question of fact and the circumstances giving rise to summary dismissal proceedings are usually spelt out in the employer's Human Resources Manual. The hallmark of summary dismissal is that the employment contract is terminated without notice or payment in lieu of notice or less notice than required.

Prior to summary dismissal, the employer must hold a disciplinary hearing and establish that the employee is guilty of the conduct complained of. The Industrial Court has explained that the rationale for holding a disciplinary hearing is to give the employee an opportunity to defend himself/herself against the allegations made against them (*see Levi Malinzi vs. Uganda Printing and Publishing Corporation, Labour Dispute No. 50 of 2015, and Dr. Omona Kizito vs. Marie Stopes Uganda, Labour Dispute Claim No, 33 of 2015*).

3. Employer's obligations upon termination

The employer's obligations upon the termination of an employment relationship include:

a. Payment of wages/salary

An employer has a legal obligation to pay wages/salary to their employee in accordance with the employment contract between the two parties. Upon termination, an employee is entitled to be paid any salary/wages which due to him/her at the time of termination.

b. Repayment of wages and other payments wrongfully withheld

All payments accruing to the employee which are wrongfully withheld or deducted must be paid upon termination. This includes salaries, allowances and any other benefits where such are withheld or deducted outside of the provisions of the law. Permitted deductions include taxes and other statutory payments such as social security remittances, payments to provident funds with the permission of the employee, deductions to cover rent on accommodation provided by the employer, contributions to labour unions and deductions in circumstances where half pay or part payment is authorised by law such as suspension or sick leave.

There are also instances where the employee provides express consent such as loan repayments to the employer or third parties. When payment is not done, the employee is entitled to lodge a claim with the Labour Officer but this must be done within a period of six years.

c. Payment in lieu of notice

Payment in lieu of notice would be in accordance with the periods already described above or according to each individual's contract of employment where the notice periods in the contract exceed those in the law. Where there are no specific provisions in the contracts or those provisions provide for less periods than what is in the law, the payments would be as follows:

- a) No notice pay for staff who have worked for less than six months.
- b) Two weeks pay for an employee who has worked for more than six months but less than one year.
- c) One month pay where an employee has worked between one year and five years
- d) Two months' pay where an employee has worked between 5 years and 10 years
- e) Three months' pay where an employee has worked for 10 years or more.

d. Payment for outstanding leave days

An employee is entitled to annual leave every year. Where there are outstanding leave days which have not been taken by the employee at the time of termination, they are calculated into money and paid, unless the employee forfeited them. An employee forfeits the leave when they are asked to take leave or an opportunity offered for the employee to take leave but the employee chooses to continue working. This requirement is applicable where an employee has worked for more than six months.

e. Holiday pay

Where an employee has worked on public holidays, they are entitled to payment at the rate twice that of usual pay for the public holidays worked. This requirement is applicable where an employee has worked for more than six months.

f. Gratuity

This is a payment in appreciation of an employee's service to an employer. The Staff Handbook/Human Resources Manual usually stipulates the conditions for entitlement to gratuity, if any. Where it is provided for in the Manual, it must be paid. If it is not provided for, there is no obligation to pay.

g. Severance pay

Severance pay or severance allowance is a sum paid by an employer to an employee who has been in continuous service in circumstances where the employee's employment contract is involuntarily terminated. Under the Act, to claim severance pay, an employee must have worked continuously for a period of six months or more.

The Act further lists the circumstances which may give rise to severance pay including; unfair dismissal of the employee, insolvency or bankruptcy of the employer, death or incapacity of the employee, an order of termination of the contract by the labour officer due to inability to pay wages by the employer.

Employees who are justifiably dismissed are not entitled to severance pay. The law does not prescribe the sum payable but leaves it for negotiation between the employer and employee or the Labour Unions.

h. Staff savings schemes, retirement and provident funds

Where an employer runs or supports a common pool such as a savings scheme, retirement and provident funds, any savings and contributions made by the employee to such a scheme and interest are payable to them, in accordance with the rules and regulations of the scheme.

i. Salary loans and similar obligations

Where at the time of termination the employee has taken a loan from a financial institution or any lender whose repayment is guaranteed by their salary, the employer has no obligation to pay the salary loan, or contribute towards its repayment once the employment ceases. The loan is based on a separate contract independent of the employment contract.

Whereas the Industrial Court had ruled that the employer was obliged to shoulder the loan obligations where the services of an employee were unlawfully terminated, this position was reversed by the Court of Appeal in *DFCU Bank Ltd vs. Donna Kamuli (Civil Appeal No. 121 of 2016)* which re-affirmed the position that the employer is not liable for any loan payments unless there is an express agreement to that effect between the employer and the employee.

j. Certificate of service

On the employee's request, the employer must provide a certificate of service to the employee upon termination. The Act does not prescribe the precise form or appearance of the certificate of service but lists what it should entail including among others, names and addresses of the employer and employee, the capacity in which the employee was employed, what the employee earned at the time of termination, and if the employee requests, the reason of termination.

The Industrial Court has explained that a certificate of service is an important document intended to provide general information regarding the employee so as to enable the next employer to assess the capability of the employee in the next assignment. The Court further stated that it is also intended to satisfy the employee as to how he/she applied his/her knowledge and expertise at the completed assignment. See *John Tushabwomwe vs. Equity Bank Ltd, Labour Dispute Claim No. 146 of 2014*.

k. Duty to notify the Commissioner for Labour and the Labour Unions

Where the number of employees terminated is 10 or more, it is called collective termination and the employer has a statutory duty to inform the Commissioner of Labour at the Ministry of Gender, Labour and Social Development, about the termination, the number of employees affected and the reasons for the termination. The employer is further obligated to inform representatives of the relevant Labour Unions of the details of the terminations at least four weeks prior to the first termination.

l. Repatriation

In certain stipulated instances, the Act provides for repatriation of employees from their workplace to their home areas. The duty to repatriate arises where an employee was employed to work at a station which is located more than 100 kilometers from their home, and the employment relationship is terminated by expiration of the contract period, for sickness, by agreement between the employer and employee or by order of the Labour Officer. The employer has a duty to repatriate an employee who has worked for at least ten years irrespective of how the employment contracts ends.

In addition, where the employee was staying with his/her family at the work place, the employer has a duty to repatriate them when the employee is repatriated or dies. In the case of *G4S Secure Solutions Uganda Ltd vs. 201 former Employees of G4S Security Services Ltd (Labour Dispute Appeal No. 022 of 2017)*, the Industrial Court has clarified that repatriation means transporting the employee from the workplace to his or her home, that is, to enable the employee return home after the termination of his employment.

m. More favourable contracts

The obligations stated here are derived from the Employment Act. The Act however protects and preserves contractual provisions stipulating more favorable terms than those provided for in the Act. Such terms may be found in the employment

contract, offer letter, the employer's human resources manual and other employment documents.

4. Conclusion

The Employment Act 2006 creates several avenues for both the employer and employee to terminate the employment contract. However, the process to terminate an employment contract should be carried strictly within the four corners of the law. Termination of employment is unfair and not permitted by law if it is premised on the employee's; pregnancy, membership or participation in activities of a labour union, race, colour, sex, religion, political opinion or affiliation, national extraction, nationality, social origin, marital status, HIV status or disability, commencement of legal proceedings against the employer, or absence from work on reliable grounds including sickness. An employee is entitled to lodge a complaint of unfair termination against the employer if the termination of their employment is based on any of the aforementioned grounds. Particular attention should also be paid to the post-termination obligations to forestall avoidable labour related disputes and claims.

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