



A NEW LABOUR REGIME: THE EMPLOYMENT ACT, 6/06

By Moses Segawa

[A] INTRODUCTION

Act 6 of 2006, the Employment Act (the new Act) replaces the Employment Act Cap.219 (the repealed Act). The new Act came into force on the 7th day of August 2006.¹ The new Act is comprehensive and introduces a wide range of reforms. All contracts of employment (contracts of services as they are called in the new Act) that are valid as at the 7th day of August 2006 are continued and deemed to be made under the new Act.² It is important to note that under the new Act, any exclusion of any provision of the Act by contract, especially to the detriment of the employee is void.³ This commentary therefore will highlight areas of change and advise on rectification or harmonization.

Apart from the Employment Act, other reforms in Labour Law have been made. Three new enactments, namely, the Labour Unions Act⁴ (replacing the Trade Unions Act), Labour Disputes (Arbitration and settlement) Act,⁵ (replacing the Trade (Disputes & Settlement) Act Cap.224), and the Occupational Safety & Health Act (replacing the Factories Act) have been passed. All these laws must be studied along with the Employment Act to determine the full extent of the employer-employee relationship. Accordingly, this commentary will identify all cross references in the new Act to those other laws. Other laws that may be referred to are –

- (i) The Workers' Compensation Act and;
- (ii) The Minimum Wages Advisory Boards and Wages Council Act.

A quick overview of the new Act shows the following new changes:

- (i) Prohibition against discrimination based on race, colour, sex, religion, political opinion, national extraction or social origin, HIV status⁶ or disability.⁷
- (ii) Prohibition against use of forced labour.⁸ This prohibition was already a constitutional provision and was the subject of a constitutional petition.⁹

¹ Statutory Instrument No.33 of 2006

² Section 24

³ Section 27

⁴ 8 of 2006

⁵ 9 of 2006

⁶ S.6(3) but any preference necessitated by a particular job is not discrimination. See S.6(4).

⁷ Disability means physical disability or impairment, physical illness, psychiatric illness, intellectual or psychological disability or impairment, loss or abnormality of physiological, psychological or anatomical structural function, reliance on a guide dog, wheelchair, or any other remedial means and presence in body of organisms capable of causing illness.

⁸ Section 5.



- (iii) Prohibition against sexual harassment.¹⁰ This “offence” can be committed by the employer or his representative. An employee is a representative of the employer for the purposes of sexual harassment if he or she is in a position of authority over the complaining employee.

Sexual harassment occurs when the employer or his or her representative –

- (a) directly or indirectly makes a request of that employee for sexual intercourse, contact or any other form of sexual activity in return for preferential treatment in employment or with a threat for detrimental treatment in employment;
- (b) uses language written or spoken, or visual material or physical behavior of a sexual nature;

which affect the employee’s employment, job performance or satisfaction.

- Penalties: Minimum compensation order for two months wages. (it seems the penalty is against the employer who is vicariously liable);
- Preventive Action: every employer who has more than 25 employees is required to put in place a sexual harassment policy aimed at curbing sexual harassment.

- (iv) Enhanced powers to Labour Officers. The Administration of the Act is placed under the Directorate of Labour in the Ministry of Labour. Each District shall have at least one labour officer.¹¹ A labour officer has authority to inspect a place of work,¹² carry out any tests or inquiries to satisfy himself or herself that the provisions of the Act are complied with including inspection of books, registers or documents,¹³ close down a place of work if he/she believes that the conditions pose imminent danger to health or safety of workers,¹⁴ settlement of grievances,¹⁵ investigation and disposal of complaints,¹⁶ power to prosecute civil or criminal cases before the Industrial Court.¹⁷ In performance of his duties, a labour officer is not to be obstructed or delayed by any person and all such directions, orders or demands made by the labour officer must be complied with.

⁹ *Major General D. Tinyefuza v. Attorney General.*

¹⁰ Section 7 of the Act.

¹¹ Section 9

¹² Section 11(a)

¹³ Section 11(b)

¹⁴ Section 11(2)(b).

¹⁵ Section 12

¹⁶ Section 13

¹⁷ Section 14.

- (v) A requirement to record accurate records with sufficient details in the employee's record and to reply to all requests by the labour officer.¹⁸

Other major changes will be highlighted in the sections below.

[B] THE EMPLOYMENT RELATIONSHIP

(a) FORM OF CONTRACT

An employment contract may be oral or written¹⁹ except where there is requirement to write.

(b) ATTESTATION

Attestation (witnessing) has been confined to one instance only. Any contract of service made in language that an employee does not understand must be attested by a magistrate or labour officer.²⁰

Position under the repealed Act:

Other than a contract made in a language which the employee does not understand, every foreign contract or a contract requiring the employee to move from one part of the country to another had to be attested. An unattested contract was void and unenforceable.²¹

Changes by the new Act:

- Attestation now confined to contracts with employees who do not understand the language in which the contract has been made.
- Labour officer now specified as one of the attesting officers.
- Unattested contract enforceable at the instance of the employee.

(c) TRANSFER OF CONTRACT:²²

- No transfer of contract without the consent of the employee.
- A transfer of business or part of the business means all contracts of service are automatically transferred on the same terms and uninterrupted as if the transferee were the transferor.

¹⁸ Section 16(1) & (2). It is an offence to contravene the above sections.

¹⁹ Section 25, but see Section 60 which requires particulars of employment to be embodied in a statement.

²⁰ Section 26.

²¹ Section 15(2) of Cap.219, applied in *Professor Syed Huq vs Islamic University in Uganda*.

²² Section 28.



The position under the repealed Act:

- A contract of employment was not capable of transfer except in circumstances where there was a change of employer.
- A change of employer occurred when a person other than the original employer acquired the whole or greater part of the property of the undertaking and continued substantially the same operations.
- A change of employer would entitle the employee or the employer to terminate the contract within one month of the change by giving a notice of one month.

The changes:

- Contract of service can be transferred with the consent of the employee.
- No right to terminate contract of service when there is a transfer of business or trade.
- A transfer of trade or business does not break the contracts of service transferred.

(d) DEATH, INSOLVENCY AND BANKRUPTCY OF AN EMPLOYER

- A contract of service is deemed terminated one month after the death of an employer, where the deceased employers personal or legal position formed the basis of the employment relationship.²³
- A contract of service is deemed terminated one month after the date of bankruptcy or insolvency of the employer.²⁴

The position under the repealed Act:

The Act was silent. Common law regulated the position. Under common law, an order to wind up a company operated as a notice of dismissal against employees.

(e) TERMINATION FOR INABILITY TO PAY WAGES.

Inability or failure to pay wages terminates a contract of service.²⁵

²³ Section 29.

²⁴ Section 30(1). However, notwithstanding the bankruptcy or insolvency, where the business is transferred or continued, the contract does not terminate.

²⁵ Section 31 of the Act. A similar position existed in Section 38 of the old Act.

(f) EMPLOYMENT OF CHILDREN

- A child under the age of twelve years cannot be employed.²⁶
- Children under the age of fourteen years will only be employed for light work between 8:00am to 6:00pm and under the supervision of an adult and the work should not affect a child's education.²⁷
- A child (13-18 years) cannot be employed in work which is injurious to his or her health, dangerous or hazardous or otherwise unsuitable to the child.²⁸

The position under the repealed Act:

Similar provisions existed under the repealed Act.²⁹

The Changes:

- Absolute ban against employment of children under the age of twelve years.
- Absolute ban against employment of children at night.

(g) MEDICAL EXAMINATION

Certain employment shall not be engaged in without medical examination of prospective employees. Employment subject to medical examination shall be specified by regulations.³⁰

(h) TRAVEL ABROAD

An employee shall not travel outside Uganda with the employer except –

- If he or she consents to such travel;
- If the contract provides so.³¹

²⁶ A child is a person below the age of 18 years. See Section 2 of the Children Act Cap.59 See also Section 3 of the Act.

²⁷ Section 32(2). This suggests that children can only be employed during holidays or after school. There is a proposal to enact a law to compel every child to attend school.

²⁸ Section 31(4)

²⁹ See Sections 50-57 of the old Act.

³⁰ Section 33. A similar provision existed in the repealed Act. Such employment was specified in the schedule to the repealed Act and it included mining, wood preservation, textile dyeing and bleaching, motor vehicle mechanics, oil extraction, pesticide work, clothes dry cleaning etc.

³¹ Section 36. It is not clear whether an employer's representative is covered under the Section.

(i) MIGRANT WORKERS

It is an offence to employ any person who is unlawfully present in Uganda.

(j) REPATRIATION

(i) This right is conferred upon employees –

- who are engaged or recruited at places which are more than one hundred kilometers from their homes;
- who have been in employment for at least ten years;

And it covers employees, family and it accrues upon expiry of the period of service specified in the contract;

- termination of contract due to sickness or accident or by agreement of the parties or by order of labour officer, industrial court or any other court.³²
- death, to the deceased employee's family.

(ii) The labour officer may exempt the employer from the obligation to repatriate the employee.

Position under repealed Act:

Similar provision existed in the repealed Act and repatriation expenses included transport and rations during the journey.³³

[C] WAGES

(a) DUTY TO PROVIDE WORK:

- An employer must while the contract subsists provide work³⁴ except³⁵ where the contract is frustrated,³⁶ performance is suspended due to an act of God, or civil strife, a strike or go slow or other industrial action or due to economic or technological³⁷ reasons which result in shortage or reduction of work that is beyond the employers control.³⁸

³² Section 39.

³³ Sections 27 & 28 of the repealed Act.

³⁴ Section 40(1) of the Act.

³⁵ Section 40(2) and (3).

³⁶ An example of a frustrated contract is where the entire business of the employer is destroyed by fire.

³⁷ Where the failure to provide work is due to technological or economic reasons, the exemption to provide work is limited to fifteen days in any one six-month period. (See S.40(6)).

³⁸ It is hard to imagine how a technological reason reducing work can be beyond control of the employer.



- Where the employer fails to provide work as required, the employee is entitled to wages as if he or she was doing work except where suitable alternative employment is provided and the employee refuses to do it.³⁹

Position under repealed Act:

Similar requirement existed in Section 17, but exceptions expanded in the new Act by adding economic and technological reasons resulting in shortage of work.⁴⁰

(b) PAYMENT OF WAGES: HOW, WHERE AND WHEN PAYABLE

- Wages to be paid in legal tender⁴¹ at employee's place of work⁴² and not in premises licensed for alcohol or places of amusement except if that is where the employee works.
- Wages may with consent of employee be paid⁴³ by cheque, postal order, money order or direct debit⁴⁴.
- Regulations to be made allowing payment of some allowances in kind.
- A clause in the contract of service controlling how the employee uses his or her wages is not allowed⁴⁵ and an employee is not obliged to make use of any shops established by the employer for the use of his or her employees operated in connection with the undertaking.⁴⁶
- Wages are not payable to employees:
 - In respect of a period where the employee is sentenced and imprisoned by court of law.⁴⁷
 - In respect of any period where he or she is absent from work without authorization or good cause.⁴⁸

³⁹ Section 40(4) & (5). We suppose "suitable alternative employment" must be employment similar to the employment undertaken by the employee previously.

⁴⁰ Section 40(3) (6) of the new Act.

⁴¹ Section 41(1).

⁴² Section 43(1).

⁴³ Section 43(2).

⁴⁴ Section 41(2). Section 41(1) should have specified that "wages in cash" should be paid in legal tender because what S.41(2) prescribe are methods of payment which can also be expressed in legal tender.

⁴⁵ Section 43(3).

⁴⁶ Section 41(4).

⁴⁷ Section 41(5). That express language may suggest that the employee is entitled to be paid for the period he is on remand before trial and sentence.

⁴⁸ Section 41(6).



“Good cause” has not been defined and the following are good causes for absence from duty by an employee who has completed at least three months continuous service –

- the occurrence of exceptional events preventing the employee from reaching his or her place of work or from working;⁴⁹
 - summons to attend court of law or public authority having authority to compel attendance;
 - death of a member of the employee’s family or dependant relative up to 6 days in a calendar year.⁵⁰
- The parties by agreement may agree on the date when wages are payable. In the absence of such agreement, wages are payable as follows⁵¹ –
 - where an employee is engaged to work one day at a time, wages are paid at the end of that day;
 - an employee paid by hour, day or week is paid⁵² at end of hour, day or week;
 - an employee paid fortnightly or monthly is paid at the end of each fortnight or month; and
 - an employee engaged to be paid by the piece of work done or by results is paid at intervals of not more than one fortnight.
 - All payments after termination should be made to the employee within seven days from the date of termination.⁵³
 - No payment of wages of an employee to another person except under written permission of employee.⁵⁴

⁴⁹ Again exceptional events not described. Sickness may be a reason. Natural calamities, civil strife and sickness of a relative may pass. Where there are no exceptional circumstances the employee must obtain authorization.

⁵⁰ Where an employee is absent from work on account of the grounds above, he will be entitled to receive all his wages.

⁵¹ Section 43(4).

⁵² The use of the word “paid” in those two instances instead of the word “engaged” is confusing.

⁵³ Section 43(5) & (6).

⁵⁴ Sections 44 and 45(1): except that payment of wages to another person may be made under process of law e.g. attachment in execution of civil judgment including say, a maintenance order or taxes.

Position under repealed Act:

Similar provisions existed in the repealed Act providing for payment of wages in local currency,⁵⁵ allowances in kind,⁵⁶ due dates of payments⁵⁷ and freedom to spend wages.⁵⁸

The changes:

- It appears there is an absolute ban on payment of wages in foreign currency even for an expatriate employee.
- Places where wages are to be paid are now specified as the employee's premise of work and not in a bar or an amusement place.
- Clarification that wages are not payable when employee under custodial sentence.

(c) DEATH OF EMPLOYEE

- Legal representatives of deceased employee entitled to receive wages and other remuneration due to employee at time of death.
- Death of an employee at place of work or on way to work to be notified to District Labour Officer.
- The body of a deceased employee who dies at work or while or traveling to his work place is to be transported to burial place at employer's cost.⁵⁹

(d) DEDUCTIONS

1. Employers to pay wages of employees in full without deductions except:-
 - Taxes, rate, subscription or contribution imposed by law.⁶⁰
 - Contribution to provident or pension fund to which the employee has consented in writing.

⁵⁵ Section 30.

⁵⁶ Section 31.

⁵⁷ Section 36.

⁵⁸ Section 35.

⁵⁹ Section 42: The Workers Compensation Insurance Policies would ordinarily cover this cost. Infact workers' compensation is wider since it also covers the employee traveling back home from work. This is a new requirement that did not exist in the repealed Act.

⁶⁰ S.46(1)(a): example of a rate is the property rate payable to urban authorities under the Local Government (Rating) Act. Contributions imposed by law include NSSF deductions. Subscriptions include subscription to professional bodies such as Uganda Law Society.



- Rent payable to employer for accommodation provided by the employer.
 - Union dues.⁶¹
2. An employee who –
- Makes a wrongful deduction;
 - Fails to deduct union dues;
- is liable to repay the wrongly deducted sum and the dues unremitted.⁶²
3. Employers must provide a pay statement containing all deductions made and their purpose and the final net wage.⁶³
4. All equipment necessary for doing work shall be provided free to employees.⁶⁴

Position under the repealed Act:

Similar provisions existed in the repealed Act⁶⁵ except the provision for pay statement and the prohibition against deductions for the cost of tools of trade provided by employers to employees.

[D] RIGHTS AND DUTIES IN EMPLOYMENT

(a) WEEKLY REST

Except for employees in managerial positions to be specified by regulations, an employee is entitled to one days rest after six days consecutive work.⁶⁶

(b) WORKING HOURS PER WEEK

Sections 53 provides for weekly hours of work in unclear terms, but the totality of it seems to be this:

⁶¹ S.46(1)(d) & S.49: A “union due” means the periodical subscription for membership of a trade union but does not include any subscription for a particular purpose. The union to which the employee belongs must request for such deductions to be made attaching the written consent of the employee and the employer is obliged to make such deductions and remit the same to the union.

⁶² Sections 47 and 49(3).

⁶³ Section 50.

⁶⁴ Section 45(2) ad 46(2).

⁶⁵ Section 32 (R.A.)

⁶⁶ Section 51(1) & (2): The catch word is “six days consecutive” work. This provision can therefore be complied with if during the 6 day period an employee took a day’s rest. This provision seems to apply whether the employee works part time or not provided he or she works every day. The day’s rest is taken on a day known for taking holidays unless there is an express agreement to the contrary.



- Normal weekly hours is forty eight.
- Maximum weekly hours is fifty six if this is agreed between employer and employee.
- In absence of agreement to the contrary, any time worked beyond forty eight hours is regarded as overtime.⁶⁷
- Maximum day work hour is ten.
- A thirty minute break where the daily work hours are at least eight.⁶⁸
- Regulations to be made to prescribe maximum number of hours per week including overtime.⁶⁹
- The rate for overtime is 1½ times of the normal hourly rate during a normal working day and two times the hourly rate during a public holiday.⁷⁰

(c) ANNUAL LEAVE AND PUBLIC HOLIDAYS⁷¹

- Minimum annual leave is twenty one days.⁷²
- Employees are entitled to rest with pay during public holidays.
- Where employees agree to work during public holiday, the
 - they will be entitled to payment at not less than double the rate of a normal working day; or
 - to a day's holiday with full pay on another normal working day.
- Annual leave days cannot be reduced by agreement and annual holiday must be taken physically by employees.⁷³

⁶⁷ Section 52(2)(b)

⁶⁸ The Section does not specify when the break should be given. The repealed Act prohibited a continuous five hour work without a break.

⁶⁹ The maximum numbers of weekly hours is in our opinion already stated in Section 53 but it is surprising that the Minister is being asked to prescribe the same. Subsection 8 of Section 53 appears to be in conflict with subsections 2, 3 & 4 of Section 53.

⁷⁰ Section 54(1)(b)

⁷¹ Section 54 of the Act.

⁷² Parties to a contract of service agree on the time when this leave may be taken. The leave can be taken at intervals of four months in a calendar year.

⁷³ Section 54(3) suggests that payment in lieu of leave is not permissible any more.



- Where an employee is terminated, he or she will be entitled to receive compensation or holiday untaken proportionate to the length of service served at time of termination.⁷⁴
- Section 70 can only apply to an employee who:
 - has performed continuous service for a minimum period of six months.
 - Work for sixteen or more hours a week.⁷⁵

(d) SICK LEAVE

- Employees who work for at least sixteen hours a week⁷⁶ are entitled to sick leave of at least two months, fully paid.⁷⁷
- A contract of service can be terminated by the employer on account of the employee's sickness any time after the expiration of two months from the date of sickness.⁷⁸
- Where a contract of service is terminated on account of sickness, the employer must comply with all terms of the contract up to the time of termination.⁷⁹
- The Employer is entitled to demand for proof of sickness including a right to refer the employee to a medical practitioner of the employer's choice.

(e) MATERNITY LEAVE

- Maternity leave is sixty (60) working days.⁸⁰ Paternity leave is four working days.⁸¹

⁷⁴ Section 54(5). But it is not clear how a terminated employee can take physical leave. Compensation would suffice.

⁷⁵ Section 54(4). This restriction is too broad to the extent it denies certain employees certain rights that may be exercisable during public holidays. It is not clear whether what has been denied is the right to take the holiday or to be paid for the holiday taken.

⁷⁶ Section 55(4): Employees who work for less than 16 hours a week may take unpaid leave or be terminated forthwith on account of sickness.

⁷⁷ Section 55(1)(6).

⁷⁸ Section 55(1)(b)

⁷⁹ Section 55(1)(6): The terms to be complied with may include annual leave, workers' compensation terms etc.

⁸⁰ Section 56(1): Working day may not necessarily mean Monday to Friday. It may depend on agreement between parties.

⁸¹ Section 57: Act does not define wife. Paternity leave accrues when wife gives birth or miscarries.



- Maternity leave should at least be four weeks after delivery or miscarriage.
- Both maternity and paternity leave is paid and at the end of each leave, the affected employee is entitled to resume his or her duties or suitable alternative duties.
- An additional two months (additional to the 60 days) are granted from the date of child birth or miscarriage, to an employee in event of sickness arising out of pregnancy or confinement affecting either the baby or the mother. In these circumstances, the employee's right to return to the job she previously held is exercisable within eight weeks from date of child birth or miscarriage.⁸²
- A female employee must give to the employer seven days notice of:
 - confinement;
 - desire to return to job previously held;
 - additional leave days due to her sickness or the baby's sickness;and may be required to produce medical evidence of her condition.

(f) NOTICE PERIODS

- Written notice of termination of contract must always be given except when the termination is summary or on account of retirement age.⁸³
- A payment in lieu of notice may be made if the employee accepts.⁸⁴
- Except where the employee's pay period is longer than the notice specified herein, in which case the notice of termination will correspond with the end of the pay period, a contract of service can be terminated with notice⁸⁵ of:
 - not less than two weeks, where the employee has been employed for a period of more than six months but less than a year;

⁸² Section 56(3): By implication, no similar right is given to male employees. It would seem that the additional two weeks may not be paid for. The context would confine the word "baby" to the baby delivered out of the pregnancy for which the employee is taking leave and the date of reckoning should be after the initial 60 days.

⁸³ Section 58(1) & (2): Under common law, no notice would be required in circumstances when the periodic contract comes to its end.

⁸⁴ Section 58(5): The payment should be the equivalent of the payment the employee should have received during the notice period.

⁸⁵ The minimum notice period is two weeks, even for a probationary contract (see S.67(4)). This seems to be a default position where the parties have not provided for longer notices. It may be advisable for employers to leave to leave the notice period to be regulated by the Act.



- not less than one month, where the employee has been employed for a period of more than twelve months but less than five years;
- not less than two months, where the employee has been employed for a period of five, but less than ten years;
- not less than three months where the service is ten years or more.

[E] STATUTORY TERMS OF A CONTRACT OF SERVICES

At any time within twelve weeks of the commencement of employment, an employee will be entitled to receive a notice in writing from the employer containing the following details.⁸⁶

- The names and address of the parties to the contract.⁸⁷
- The date on which employment under the contract began, specifying the date from which the employer's period of continuous service for the purposes of this Act shall commence.⁸⁸
- The title of the job that the employee is employed to do.
- The place where the employee's duties are to be performed.
- The wages which the employee is entitled to receive, how the wages are to be calculated, the intervals at which wages will be paid and the deductions to be made.
- The rate of any overtime pay applicable to the employee.
- The employee's normal hours of work and the shifts or days of the week on which such work is to be performed.
- The terms or conditions relating to incapacity for work due to sickness or injury, including any provision for sick pay.
- The length of notice in excess of that provided by the Act required for lawful termination of the contract by the employer or employee.

⁸⁶ Section 59: In effect the section prescribes terms that must be in a contract of service (statutory terms of a contract of service). Under Section 60 of the Act, these written particulars can be used as evidence of the existence of the terms of employment. Employers may refer employees to a document which contains these particulars such as the Human Resource Manual. But some of these terms differ from employee to employee and therefore should be included in the employees contract if written at the time of engagement.

⁸⁷ The parties to a contract of employment are the employer and the employee.

⁸⁸ Under the Act "continuous service" begins on the date of commencement of employment. Continuous service is relevant in determining an employee's right to severance allowance under Section 87 of the Act.



[F] CERTIFICATE OF SERVICE

At termination of the contract of service an employer shall, if requested by the employee be obliged to issue a certificate of service.⁸⁹

Position under the repealed Act:

- Weekly rest was at least 24 continuous hours.
- Maximum normal weekly hours of work was forty eight.
- Annual leave was eighteen days.
- Public holidays were recognized.
- Sick leave with pay was two months.
- Maternity leave was up to a maximum of three months (i.e. one month paid leave, and in the event of sickness arising out of the pregnancy, another two months unpaid leave).
- Contracts could be terminated with notices and the length of notice depended on the period served, the agreed notice not being less than the maximum prescribed by the Act.

The changes:

- Maximum hours per week increased from 48 to 56.
- Annual leave has been increased to twenty one days.
- Right to defer the taking of annual leave for at least two years has been omitted.
- Paid maternity leave has been raised from one month to 60 working days.
- Maternity leave also arises where a female employee suffers a miscarriage.
- Paternity leave has been introduced.
- The termination notice period for a person who has worked for one year has been enhanced from one week to at least two weeks.
- Written particulars of contract of employment now required.

⁸⁹ The particulars or contents of a certificate of service are specified in Section 61 and both the certificate of service and the evaluation document must be written in a language that the employee is reasonably expected to understand.



- Certificate of service now an entitlement.

[G] DISCIPLINE

- All employers must have a disciplinary⁹⁰ code written in a language which employees understand and which must be followed whenever disciplinary procedures are undertaken.
- Disciplinary action against an employee can be invoked whenever –
 - there is neglect to carry out duties;
 - failure to carry out duties
 - alleged failure to carry out duties.
- A disciplinary penalty may take the form of⁹¹
 - a written warning.
 - Reprimand.
 - Suspension from work.⁹²
- All disciplinary penalties must be imposed within fifteen days from the time the employer becomes aware of the occurrence giving rise to disciplinary action.⁹³

Position under repealed Act:

Act was silent. Matter was regulated by the contract between the parties.

[H] TERMINATION

- Termination occurs in the following instances:⁹⁴
 - The contract of service is ended by the employer with notice even if the employee leaves before the expiry of notice.
 - An expired fixed term contract is not renewed within one week from date of expiry on same terms or terms not less favourable to the employee.
 - Where the contract is ended by the employee for unreasonable conduct of the employer.

⁹⁰ Schedule I to the Act.

⁹¹ Section 62(2): This section suggests that the other penalties may be imposed but rule 11 of the Disciplinary Code limits the penalties that may be imposed to only those in the section.

⁹² Any suspension as a penalty should not exceed fifteen days in any six-month period.

⁹³ Section 64: Further regulation of the application of this section shall be made in regulations.

⁹⁴ Section 65.



- Full notice of termination is mandatory except in cases of summary dismissal.⁹⁵
- If an employee is being dismissed even summarily, on grounds of misconduct or poor performance, the employee must be heard and if possible in presence of another person of his choice.⁹⁶ Failure to hear the employee before any dismissal may attract a damage payable to the employee equivalent to four weeks net pay.⁹⁷ In addition, the dismissal may be unfair.
- Summary termination is only justified upon a fundamental breach of the obligations under the contract and it can be effected forthwith or with a notice shorter than that specified by law or by contract.⁹⁸
- An employee may lodge a complaint of unfair summary dismissal in addition to unfair dismissal⁹⁹ and the remedies may include¹⁰⁰
 - payment for the period of notice that would have lawfully terminated the contract;
 - a basic compensatory order of four weeks wages;
 - an additional compensatory order not exceeding three months wages.
- A probationary contract can be terminated by fourteen days notice or by seven days wages payment in lieu of notice.¹⁰¹
- Collective Termination/Redundancy

This occurs when an employer contemplates to terminate over a period of three months, ten or more employees for economic, technological or structural reasons; whenever the employer contemplates to effect a collective termination, he or she must inform the labour union representing the affected employee and notify the commissioner of labour of the reasons for termination and the number of employees affected.¹⁰²

⁹⁵ Section 69(2).

⁹⁶ Section 66. This can be an advocate.

⁹⁷ Section 66(4).

⁹⁸ Section 69(1) & (3): Under common law summary termination also meant dismissal without hearing. See Civil Appeal No.1 of 1998, Barclays Bank Ltd vs Godfrey Mubiru. Section 66 has modified this common law position by granting a right to be heard even in cases of summary dismissal.

⁹⁹ Section 70(4).

¹⁰⁰ Section 70(4) and 78(1) & (2).

¹⁰¹ Section 67(4). An employee on probation may be terminated without complying with Section 66 i.e. he or she need not be heard and he cannot complain of unfair termination. See Section 71(3).

¹⁰² Section 81.

[I] UNFAIR TERMINATION

An unfair termination complaint¹⁰³ can only be made by an employee who has worked for a minimum period of thirteen weeks and will only succeed if any of the following grounds is proved¹⁰⁴ -

- The dismissal was due to pregnancy or reasons related to pregnancy.
- The dismissal was due to the employees' participation or proposed participation in labour union activities as provided in the Act.¹⁰⁵
- The dismissal was due to race, colour, sex, religion, political opinion or affiliation, nationality, social origin, marital status or HIV status or disability.¹⁰⁶
- The dismissal is due to the employees' attempt to enforce remedies under the Act.
- The dismissal was due to the employees temporary absence from work for any period up to three months on reliable grounds including illness and inquiry.
- The dismissal did not follow the procedure or the employee was not handled like similar issues are handled and where the dismissal is unlawful, the employee may receive –
 - a basic compensatory order of four weeks wages.
 - An additional compensatory order not exceeding three months wages.

[J] CONTINUITY

Definition of Continuity of Employment:¹⁰⁷

- Continuous employment/service is the employee's period of uninterrupted service with the same employer whether or not the employee remains in the same job and includes the first and last day of employment.

Consecutive periods of employment with two successive employers where the successor has taken over the business of the former employer as receiver, liquidator,¹⁰⁸ person representative or heir or upon transfer of whole or part of the business.

¹⁰³ Section 71(1).

¹⁰⁴ Section 73(1)(a) and 75.

¹⁰⁵ Section 75 and 76: This includes a lawful organization of or participation in an industrial action e.g. strike

¹⁰⁶ Section 75(e). Disability is defined to mean illness, psychiatric illness, intellectual or psychological disability or impairment etc.

¹⁰⁷ Section 83.



- Continuity of service/employment is not affected by¹⁰⁹
 - any annual, sick, maternity or study leave taken in accordance with the Act or under the provisions of an agreement;
 - suspension with or without pay in accordance with the Act or an agreement;
 - temporary lay offs by the employer;
 - strike, lock-out or other industrial action in which the employee did not participate;
 - sentence of imprisonment for an offence unrelated to employee's work;
 - any absence due to participation in a strike or other industrial action;¹¹⁰
 - interval between two periods of employment with the same employer where the employer has agreed that in consideration of the employee refunding or agreeing to refund any severance allowance and other terminal benefits received, service shall be regarded as continuous.

- Importance of continuous service/employment.

The importance of continuous service is seen in Section 87 which provides for severance allowance. Severance allowance is payable to any employee who has been in continuous service for a period of six months or more in circumstances where –

- the employee is unfairly dismissed;
- the employee dies in service of his or her employer other than by an act occasioned by his or her own serious and willful misconduct;¹¹¹
- employee terminates his or her contract because of physical incapacity not caused by employee's willful misconduct;
- contract is terminated by reason of the death or insolvency of the employer;
- contract is terminated by labour officer under Section 31 or such other circumstances as the Minister may prescribe.

¹⁰⁸ Under common law, the making of a winding up order which would mean the appointment of a liquidator had the effect of terminating the contracts of service.

¹⁰⁹ Section 84.

¹¹⁰ Section 85(1).

¹¹¹ For example suicide. No other example of willful misconduct can be envisaged.



- Severance allowance is payable on cessation of employment or on grant of leave of absence pending cessation whichever is earlier or upon death of employee, within 30 days from date of death to the entitled representative.¹¹²
- Severance allowance is negotiated between the employer and the workers or the workers' union¹¹³ and the amount may depend on whether any other payments other than those provided under the Act are payable to the employee.
- It is an offence punishable with a fine (twice the amount of severance allowance payable) to fail to pay severance allowance.

Remedies:

- All claims of infringement of any rights granted by the Act/all employment disputes, shall be handled and disposed of by a labour officer except claims in torts arising out of the employment relationship which shall be handled by the industrial court.¹¹⁴
- Appeals lie to the Industrial Court.

The writer is the Principal Associate at Sebalu & Lule

¹¹² Section 91(1)&(2).

¹¹³ Section 89. Severance pay is normally premised on basic pay for a part of every completed year of service. Under the local Governments Act, severance package is the equivalent of six months basic pay for every completed year of service.

¹¹⁴ Section 93.