

Accra, March 27th, 2020

OBJECT: LABOUR LAWS APPLICABLE IN GHANA DURING A PANDEMIC

In the midst of this current global pandemic (COVID-19) and much uncertainty, many employers are understandably unclear about the labour laws applicable to their workforce as well as the liability of the employer during this pandemic.

Please find below an overview of the labour laws which may be applicable during this global pandemic.

We have highlighted below the rights, duties and obligations of both the employer and the employee.

I. LABOUR LAW PROVISIONS

It is important to note that in Ghana, there are no precedents or strict labour law provisions that are specifically applicable in the event of a pandemic. However, there are provisions in the labour regulations where it can be inferred that such provisions can be triggered or applied in the event of a pandemic.

Section 119(1) of the Labour Act, 2003 (Act 651) permits the employee to retreat from his/her workplace where the employee finds himself/herself in a situation at their place of work and has reasonable cause to believe that due to such situation, his/her presence at work presents an imminent and serious danger to his or her life, safety or health. In such instance, the employee is required to immediately report this fact to his or her immediate supervisor and remove himself or herself from the situation.

Thus, in light of the current virus, which is spread from one person to another, or through surfaces such as door knobs, etc. an employee may feel that his/her presence at work poses an imminent danger to his/her life and health particularly because the said employee is likely to come into contact with other employees who may be carriers of the virus. In such instance, the employee may retreat from his/her place of work.

Although section 119(1) of Act 651 is specific to the workplace, it may be inferred that considering the current pandemic, employees who particularly rely on public transport to get to their workplace may also decide to retreat from their place of work as such employees may be of the view that contact with various persons on their way to work presents an imminent and serious danger to their life and health.

Further, section 119(2)&(3) of Act 651 also provides that in the event that an employee retreats from work due to circumstances highlighted in section 119(1), the employer shall not dismiss or terminate the employee nor can the employer withhold any remuneration of the employee. Further, an employer is under an obligation not to compel an employee to return to work where the circumstances set out in section 119(1) of Act 651, still exist.

Thus, based on the above provisions, it can be inferred that in the event an employee decides to retreat from the workplace due to the virus, the employer is required to pay the said employee's salary and shall not compel such employee to return to work where the employee is still presented with serious danger to his/her life or health.

Per section 118(1) of Act 651, an employer is required to ensure that every worker employed by the company works under satisfactory, safe and healthy conditions. Section 118(2) also highlights the obligations of an employer in respect of health and this may be applicable in the current pandemic. Per section 118(2), an employer, has a duty to:

- Take steps to prevent the contamination of its workplaces by substances or materials that are likely to cause risk to the health of employees;
- Provide separate, sufficient and suitable toilet and washing facilities; and
- Provide adequate supply of clean drinking water at the work-place.

Where an employer fails to fulfil its obligations under section 118 without any reasonable excuse, the employer will be liable on summary conviction to a fine not exceeding 1000 penalty units¹ (i.e.GHS 12,000) or to imprisonment for a term not exceeding 3 years or to both.

In the event that occupational accidents or occupational diseases occur at the workplace, per section 120 of Act 651, the employer is required to report such incident(s) to the appropriate government agency within seven days of the occurrence of the incident(s).

Further, it is important to note that although the Workmen's Compensation Law 1987 (PNDC 187) is specific to personal injuries, incapacity or death as a result of accident arising out of and in the course of employment of the employee, section 31 of the Workmen's Compensation Law highlights that the Secretary responsible for labour matters may by a legislative instrument extend the provisions of the Workmen's Compensation Law to cover occupational diseases. The disease should however have been contracted within a period of twelve months previous to the date of the employee's incapacity. Kindly note that the World Health Organisation's publication² about coronavirus, although applicable to health workers, indicates that where an employee is infected with COVID-19, this would be considered as occupational exposure resulting in illness and thus, shall be considered as an occupational disease.

¹ Presently, 1 penalty unit is GHS 12.

² Coronavirus Disease (COVID-19) Outbreak: Rights, Roles And Responsibilities of Health Workers, Including Key Considerations For Occupational Safety And Health – Page 2.

Thus, even though the current labour laws do not directly have provisions relating to a pandemic, it can be inferred from section 31 of the Workmen's Compensation Act that in the event that an employee is infected with COVID-19 which arises out of and in the course of their employment, a broad interpretation of the Workmen's Compensation Act by the Court, may lead to the application of the provisions of the Workmen's Compensation Act where the employer may be required to pay compensation.

Recently, Parliament has passed the Impositions of Restrictions Bill, 2020 which has been assented to by the President of Ghana. This legislation will give the President the legal authority to pass directives to impose restrictions on persons in the event of disasters and emergencies in the interest of public safety, health and protection. In light of the current pandemic, it is important to note that the President may issue directives which may restrict the movement of persons including employees.

II. CONCLUSION

In conclusion, although there may not be any labour laws directly applicable in the event of a pandemic, the above-mentioned legislation can however be applied in the current context.