



GOOD LABOUR PRACTICES FOR EMPLOYERS AND WORKERS IN GHANA

**A position paper by the
Ghana Employers' Association**

April 2021

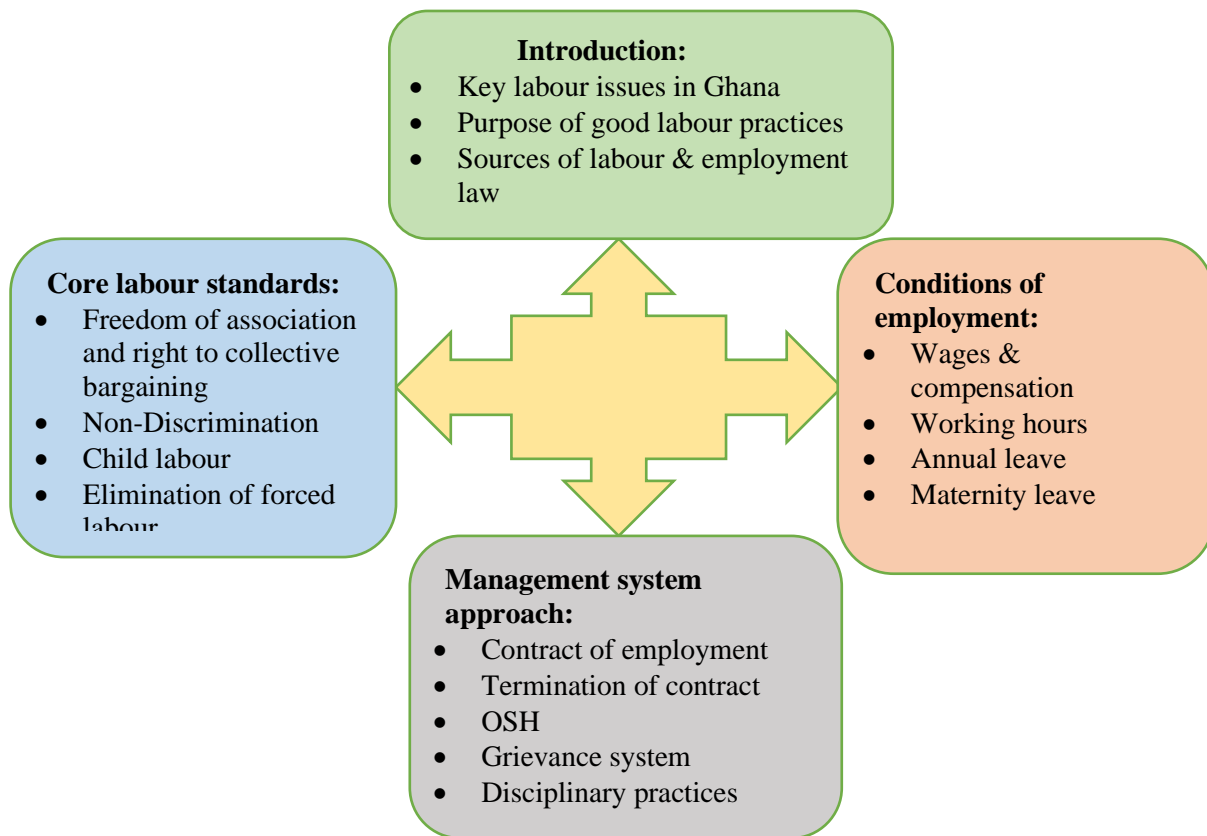
1. Introduction

The spate of rising industrial dispute in Ghana is a major concern for the Social Partners and policymakers. It is affecting productivity, business expansion, wealth and decent job creation. This assertion has been confirmed by employers and workers representatives in a survey conducted by the Ghana Employers' Association (GEA) in October 2020, with the support of the Bureau for Employers' Activities of the International Labour Organization (ACT/EMP - ILO), to ascertain the cost and causes of the rising industrial disputes in the country.

There is therefore the need for the Social Partners (i.e., Employers and Workers) to acquaint themselves with the basic rules, regulations and policies that govern Ghana's labour market in order to reduce the rising labour disputes to its barest minimum level.

It is for this reason that GEA developed this paper to serve as a practical supporting tool for both employers, workers and their union representatives in the discharge of their activities in the labour market. It is further expected that the deployment of this tool at the workplaces will significantly reduce the frequency of labour disputes and employment issues, thus engendering the required harmonious industrial relations climate in all economic sectors in Ghana. This will play an invaluable role in supporting businesses and Ghana's economy to recover rapidly from the health, economic and general social disruptions occasioned by the COVID-19 pandemic, since its outbreak in Ghana in March 2020.

Figure 1: Issues covered in the paper



Essentially, good labour practice borders on the compliance of the laws, regulations, rules, procedures and processes as well as policies that govern the labour market. Inspiration should therefore be drawn from both the legal and extralegal sources concerning the subject in Ghana.

The legal sources comprise of the 1992 Constitution of the Republic of Ghana, Labour Act 2003 (Act 651), Factories, Offices & Shops Act 1970, NLC Regulations 2006, Labour Regulations 2007, National Pensions Act 2008, National Pensions (Amendment) Act 2014, Persons with Disability Act 2006, Workmen's Compensation Law, 1987, and Fair Wages & Salaries Act 2007.

The extralegal sources include collective agreements, policy statements and other regulations as well as labour standards adopted by the International Labour Organization (ILO) and ratified by Ghana.

Based on the foregoing, good labour practices should be tackled from the following three areas:

- Management system approach,
- Conditions of employment, and
- Core labour standards.

2. Management System Approach (MSA)

The MSA encompasses human resource management policies, procedures and mechanisms for their implementation that facilitate continuous workplace performance. This approach emphasizes joint problem-solving processes to ensure that issues and grievances raised are addressed effectively through the joint efforts of employers and workers at the workplace.

a. Contract of Employment

The Labour Act 2003 (Act 651) provides clear guidelines and principles that underlie a contract of employment. According to the Act, a contract of employment means a contract of service whether expressed or implied. An expressed contract can be either oral or in writing. It is important to note that all employment relationships start with a contract. Whether oral or written, the contract of employment is legally binding between the employer and the employee. However, it is mandatory on the part of the employer to provide all employees a written statement of employment particulars within two (2) months after the commencement of employment relations.

With different periods, a fixed-term contract indicates the start and end date of the contract while permanent contracts specify only the start date. It is important to note that fixed-term contracts can be extended upon expiration. However, a best practice advocates that a permanent contract should be considered when successive extensions occur over long periods.

As a matter of principle, there must be a written offer of employment to a proposed employee. The employment offer should clearly outline the following:

- Job title
- Duties and responsibilities
- Conditions of Service.

It is imperative that the employee understands the terms of the contract before acceptance. Essentially, an acceptance of the employment offer commences the contract between the employer and the proposed employee.

Good labour practice enjoins the proposed employee to write a formal letter of acceptance, particularly when the contract is operational for six months or more. Once an employment offer is officially accepted, the only way for termination requires that both parties are in agreement. Thus, either party may take legal action against the other for breach of contract, once the contract is in existence.

b. Termination of Employment Contract

- Unfair termination of contract has been documented by the National Labour Commission (NLC) as a major cause of labour disputes in Ghana. Termination refers to any condition where the employment relationship between the employer and the employee is annulled. This phenomenon can take the following forms:
 - Resignation
 - Redundancy
 - Retirement, and
 - Dismissal with cause.

In relation to Dismissal with cause, it is an entrenched responsibility of employers to prove that the misconduct of the employee was in serious contravention of documented rules and regulations and that the disciplinary action taken was fair in the circumstances. With the obligation lying on the employer to demonstrate substantial grounds for Dismissal with course, proper procedures, including a record of actions undertaken and warnings issued must be kept and followed.

Section 15 of the Labour Act 2003 stipulates five (5) distinct grounds for termination of employment contracts:

- By mutual agreement between the employer and the worker
- By the worker on grounds of ill-treatment or sexual harassment
- By the employer on the death of the worker before the expiration of the employment
- By the employer, if the worker is found on medical examination to be unfit for employment and;
- By the employer because of the inability of the worker to carry out his/her work due to sickness or accident, incompetence and proven misconduct of the worker.

Invoking any of the grounds for termination of employment requires a minimum period of notice to be given to either party. Section 17 of the Labour Act, 2003 uses the pay rates and tenure to specify the minimum notice period.

For a contract of three (3) years or more, one (1) months' notice period or one month's pay in lieu of notice. However, in a case of a contract of less than three (3) years, two (2) weeks' notice or

two weeks' pay in lieu of notice is required. It is important to note that the notice provided shall be in writing and the day the notice is given shall be counted as part of the notice period.

In terms of payments accruing to termination of employment contracts, the type of termination determines the final payment to be made to an employee. Salary employers are required to calculate an employee's salary up to the last day of employment. Moreover, the employer is required to pay any remuneration earned by the worker as well as any deferred pay due to the worker before the termination. Besides, the employer is required to pay any compensation due to the worker as a result of an accident or sickness. It is also mandatory for the employer to pay all remuneration due to the worker before the expiration of the notice period.

However, these provisions are not applicable where the contents of a collective agreement clearly spell out the terms and conditions for termination of the contract of employment. Thus, the worker must understand and seek clarification on the terms and conditions of a contract before appending his/her signature.

c. Occupation Safety and Health (OSH)

Occupational Safety and Health (OSH) is a multidisciplinary practice dealing with all aspects of health and safety in the workplace, with a strong focus on preventing workplace hazards. OSH is critical for three (3) distinct reasons:

- Moral and social responsibility (workers should not suffer or lose their life as a result of work);
- Legal responsibility (the law mandates employers to safeguard their staff and business);
- Economic responsibility (accidents are expensive and can redirect scarce resources from productive activities).

The Labour Act 2003 (Act 651) and the Factories Offices & Shops Act 1970 explicitly outline the rights and responsibilities of both the employer and the worker in relation to OSH. The employer is required by law to provide a safe place for work and make available safety equipment as well as necessary information and training that prevents damage and injury at the workplace.

On the other hand, workers are required to take reasonable care of their health and safety, correctly use personal protective clothing and cooperate with stipulated safety protocols at the workplace. However, workers have the right to remove themselves from imminent and serious danger to their lives, safety, or health without the risk of termination.

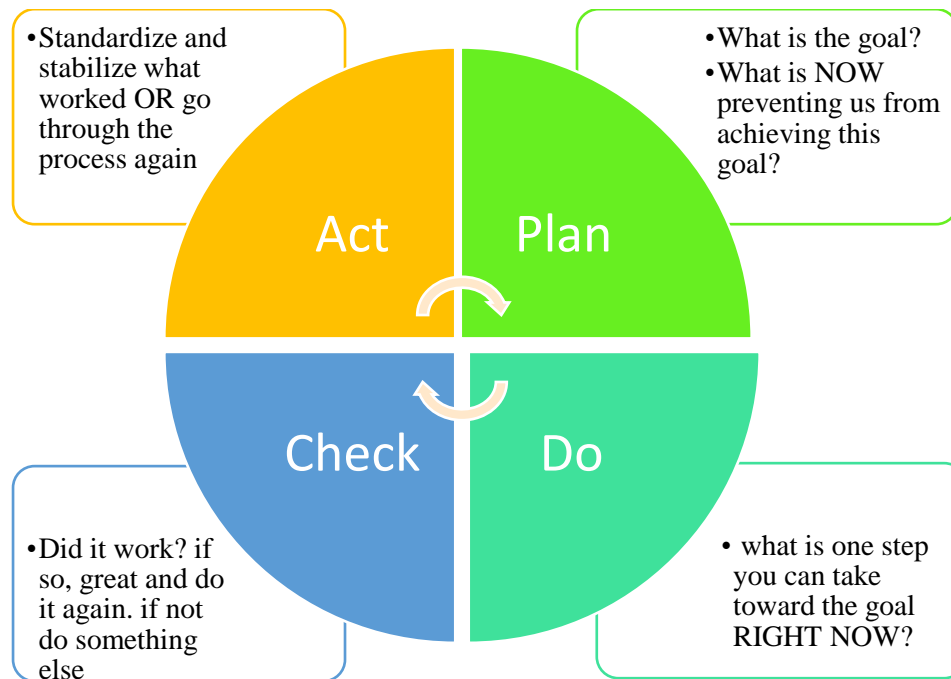
As part of good labour practice, it is best for every establishment to develop a written Health and Safety Policy to safeguard the safety, health and welfare of its employees. There should be a concerted effort to create awareness and sensitize employees on the contents of the Health and Safety Policy developed. This initiative can be undertaken by incorporating the policy in the handbook of employees or displaying a placard at strategic positions within the organization.

Contemporary best practice prescribes that the Health and Safety Policy contain three (3) main sections:

- A statement of general policy;
- A company section outlining the responsibilities of the different categories of employees; and
- The arrangements section specifying the steps taken to ensure a safe and healthy work environment. Special attention must be given to vulnerable groups such as young people, pregnant women, the elderly, and persons with disabilities in the development of the Health & Safety Policy.

The ILO recommends the Plan-Do-Check-Act framework as a workable approach to the management of OSH in organizations (see Figure 2). This framework is cyclical in its approach and emphasizes the need for constant review, assessment and continuous improvement. Cooperation between employers and workers generates the best results, and this can be achieved through OSH committees, etc.

Figure 2: The Plan-Do-Check-Act Cycle



c. Grievance System

Disputes may occur in the workplace from time to time as a result of a variety of reasons. Disagreements among employees as well as worker-employer disputes must be resolved on time to minimize their impact on the activities of the organization. It is therefore important to institute a grievance system in the workplace to timeously resolve disputes when they arise. The Labour Act 2003 (Act 651) provides clarity on the procedures for the settlement of disputes.

The procedure for resolving disputes begins with settlement by negotiation. Here, parties are required to settle disputes in accordance with the procedures in their collective agreement or contract of employment. The second phase involves the process of settlement by mediation. This provision is invoked where parties fail to settle disputes within seven (7) days of occurrence. In such a situation, disputes are to be referred to the NLC, which is mandated by Act 651 to facilitate the settlement of industrial disputes.

However, where parties fail to agree to refer the dispute for voluntary arbitration or the dispute remains unresolved at the end of the arbitration proceedings, parties may provide notice of intention to resort to strike or lockout. It is important to note that, parties may proceed to strike or lockout only after seven (7) days from the date of the notice. Lastly, the dispute shall be settled by compulsory arbitration if it remains unresolved within seven (7) days from the commencement of the strike or lockout.

Section 162 of the Labour Act 2003 (Act 651) requires the settlement of disputes involving workers engaged in an essential service to be completed within three (3) days of the occurrence of the dispute by negotiation. If the dispute remains unresolved after three (3) days, the parties within 24 hours must refer the matter to the NLC for compulsory arbitration within three (3) days. It is imperative to note that employers and workers engaged in essential service are prohibited from triggering a lockout or strike action respectively.

d. Disciplinary Practices

Disciplinary practices are significant in maintaining standards of behavior and performance expected from employees. The Labour Act 2003 (Act 651) mandates organizations to develop and follow sound disciplinary procedures. Documents such as Codes of Conduct, Standard Operating Procedures, Codes of Discipline and Employee Handbooks can be used to communicate expected standards to employees.

In establishing a disciplinary policy, management should ensure that the policy complies with good human resource practice and universally accepted industrial relations standards. Where appropriate, management should seek dialogue with trade unions or employees on the formulation of a disciplinary procedure.

It is imperative that management clearly communicates the established standards to employees to ensure knowledge of the standards required of them. Besides, consistent application of discipline is significant to enhance the behavior and performance of employees. Thus, management should take conscious steps to train workers in the use and application of the codes and standards of the organization.

Furthermore, discipline may be triggered in situations of gross misconduct (e.g., theft, fighting, insubordination, cursing, conviction of a serious crime etc.) which could warrant termination, minor misconduct (less serious offences, but if repeated could lead to termination) and poor performance.

In the application of a disciplinary procedure, the initial step is to conduct a thorough investigation of supposed breaches of standards or performance targets. The next step involves suspension from duty with pay, particularly if management is convinced that the continued presence of the employee may impede the investigation process. This is followed by a disciplinary hearing, where the employee is permitted to exercise his right to respond to all allegations leveled against him. It is important to note that the employee can exercise the right to be represented in the disciplinary hearing by a trade union, attorney, or any other person desired.

Good practice advocates for a progressive disciplinary process before the decision of dismissal is arrived at. This process begins with the issuance of caution or counseling to the employee, in situations where conduct or performance is unsatisfactory. A verbal warning should then be given for insufficient improvement. Thereafter, a written warning is issued after the verbal warning fails to improve conduct or performance. A second and final written warning should be issued with reference made to previous warnings. Subsequently, an employee who fails to improve conduct or performance should be suspended without pay. This stage is viewed as an alternative to dismissal and should not exceed two (2) months. The final stage is outright dismissal and termination of a contract, where insufficient improvement in the performance or conduct is observed.

3. Conditions of Employment

Every employment relation integrates certain conditions of service that are either required of or enjoyed by the worker. These comprise of wages and compensation, working hours, annual leave and maternity leave amongst others.

a. Wages and Compensation

There should be equal remuneration for men and women for work of equal value. This principle also includes jobs of a different nature, but that are equal in value.

The primary objective of any compensation programme is to attract potential workers, meet the demands of current employees and motivate the retention of well-performing workers in the organization. Thus, compensation packages should be designed to balance both employee and organizational needs. The wages and salaries of workers must be competitive in relation to other employers in the industry. The compensation package should be motivational, fair and equitable to eschew unhealthy comparison and dissatisfaction amongst employees.

As a matter of principle, the development of a compensation package should take into consideration the nature and scope of the job, what other employers pay their employees for comparable jobs (external equity), what you pay employees in comparable positions (internal equity) as well as the performance of the organization. Adherence to this principle helps to avoid under-compensation and over-compensation of workers.

Compensation packages can be categorized into wages/salary and benefits. Wages/salaries constitute the monetary portion of the worker's compensation package. Provisions spelt out in the Labour Act 2003 (Act 651) requires that salaries are paid in legal tender, either by cash, cheque or

direct deposit. It is significant for the employer to itemize the payslip to indicate gross pay, agreed deductions and net pay as well as the date of payment. The second component of the compensation package is allowances/benefits. Benefits consist of additional cash or kind rewards that accrue to the employee apart from pay. Some benefits to employees include but not limited to fuel/maintenance allowance, clothing, transport/utility, complimentary meals, sick leave payment, entertainment, health and security allowances amongst others.

b. Working Hours

Working hours is one critical condition of employment that is contentious and often abused particularly in developing economies. Section 33 of Act 651 stipulates a maximum of eight (8) hours or forty (40) hours a week of active work. Nonetheless, certain establishments may operate with prescribed hours of work different from eight (8) hours for one or more days in a week. In situations where shorter hours of work are fixed, the hours of work on the other days of the work may be proportionately longer than eight (8) hours but shall not exceed nine (9) hours a day or a total of forty (40) hours a week. Moreover, in other circumstances where long hours of work are fixed, particularly in seasonal jobs, the average number of hours of work in a year shall not exceed eight (8) hours a day. It is also imperative to note that workers are required to take a compulsory weekly rest from employment activities to protect their health as well as physical and mental integrity.

c. Overtime Work with/without Pay

Any additional hours worked in excess of the fixed duration specified by the rules of engagement shall be regarded as overtime. Thus, an employee may not be obligated to undertake overtime work, unless that undertaking has fixed rates of pay. Moreover, an employee shall not be coerced to do overtime work unless, either the nature of the job requires overtime to be viable or overtime is warranted in emergency situations to avert threat to life and property. Additionally, an employee may be required to undertake overtime work without pay in exceptional circumstances, particularly during emergencies that threaten lives as well as the existence of the establishment.

d. Annual Leave

Every worker is entitled to an annual leave for a period not less than fifteen (15) working days with full pay in any calendar year of continuous service. The phrase “full pay” means that the employee receives his/her usual remuneration with other kind benefits, but without overtime payment. It is important to note that the requirement of continuous service is met if the employee works for two hundred (200) days for undertakings which are not maintained regularly throughout the year. Besides, public holidays and absence from duty due to sickness certified by a medical practitioner as well as pregnancy confinement shall not affect the annual leave period. The worker

must provide notice of the date of commencement of his/her annual leave, at least thirty (30) days before the worker takes leave.

e. Maternity Leave

A woman worker is also entitled to a maternity leave of at least twelve (12) weeks, in addition to any period of annual leave, upon production of a medical certificate issued by a medical practitioner or a midwife. While on maternity leave, the woman worker is entitled to be paid her full remuneration and other benefits. Protection is also provided after maternity leave. A nursing mother is entitled to interrupt her work for an hour during her working hours to nurse her baby. Interruptions of work by a nursing mother to nurse her baby shall be treated as working hours and paid for accordingly.

4. Core Labour Standards

The core labour standards included in this paper include, but not limited to freedom of association and right to collective bargaining, discrimination, child labour and elimination of forced labour. These are a set of fundamental, universal and indivisible human rights that people need to defend and improve their conditions at work. The enforcement of these rights engenders equity and social justice as well as decency and dignity.

a. Freedom of Association and Right to Collective Bargaining

Freedom of Association emphasizes the right of employees to join a trade union. Collective Bargaining (CB) is recognized by the ILO as one of the fundamental rights of the worker and featured exclusively in ILO Conventions 98 and 151 as well as Recommendation 91. CB refers to the process of dialogue which encompasses formal, good faith negotiations between one or more employers on one hand, and one or more trade unions on the other hand.

CB is significant in determining working conditions and terms of employment as well as regulating relations between employers and workers. The process of collective bargaining starts with the recognition of a trade union, formal negotiations and then the signing of the Collective Agreement. Collective agreements must be written and signed. Besides, the employer and the trade union are obliged to disseminate copies of the agreement to all workers for their study and compliance.

b. Discrimination at Work

The freedom from discrimination at work is enshrined in Conventions 100 and 111 of the ILO. In a contemporary workplace setting, some issues have become extremely significant and typically required policy direction to ensure freedom from discrimination. Some of these issues relate to the

management of workers with real or perceived HIV/AIDS status and others who have recovered from COVID-19 as well as other life-threatening diseases. It is important that every organization develops and implements a policy statement to protect human rights and dignity, mitigate stigma and discrimination as well as provide care and support for persons living with these conditions. This policy should incorporate relevant issues such as grievance and disciplinary procedures, care and support, non-discrimination, the continuation of employment as well as confidentiality and non-disclosure of the status of affected employees.

c. Freedom from Child Labour

The term “**child labour**” is defined as work that deprives children of their childhood, their potential and their dignity, and that is harmful to their physical and mental development. Freedom from child labour is enshrined in Convention 138 (1973) on Minimum Age for Entry into Employment and Convention 182 (1999) on Worst Forms of Child Labour both ratified by Ghana. In Ghana, the minimum age for engaging a child in regular work is 15 years (Section 90 of the Children’s Act, 1998 (Act 560) and for engaging a person in hazardous work is 18 years. Whilst child labour takes many different forms, a global priority is to eliminate without delay the worst forms of child labour. Thus, good labour practice in Ghana includes the combined efforts of all actors in the labour market to remove children from the various workplaces.

d. Elimination of Forced Labour

Freedom from forced labour is enshrined in Convention 29 on Forced Labour (1930) and Convention 105 on the Abolition of Forced Labour (1999) and must also be an area of focus. According to Convention 29, forced labour is defined as “all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily”. It also refers to a situation in which persons are coerced to work through the use of violence or intimidation. However, there are some exemptions to forced labour under certain conditions. These conditions include compulsory military service, normal civic obligations, prison labour and minor communal services as well as work in emergency situations (such as war, famine, flood and earthquake).

e. Sexual Harassment

The ILO defines sexual harassment as a sex-based behaviour that is unwelcome and offensive to its recipient. Sexual harassment involves unwelcome sexual advances, requests for sexual favours and other verbal, non-verbal or physical conduct of a sexual nature when submission or rejection of such behaviours affect an employee’s job status and conditions of employment.

Sexual harassment may also take the form of a hostile work environment in which these behaviours create a working environment that is intimidating, offensive or humiliating. It is a good practice

for organizations to develop and implement a sexual harassment policy, which states the position of the organization as well as procedures for investigation and disciplinary measures.

5. Conclusion

It is the hope and belief of GEA that, an appreciable understanding and application of these good labour practices will minimize labour disputes, motivate employees and create an enabling work environment for improved organizational performance. It is our candid conviction that strengthening advocacy and awareness on these practices at the workplace will foster a harmonious climate at the workplace and contribute to increased productivity and the overall growth of Ghana's economy.

GEA

14 Tafawa Balewa Street, North Ridge, Accra

Website: www.ghanaemployers.com.gh

