



Termination of A Contract of Employment By An Employer in Ghana

Edition 11 - June 2021

Newsletter

Editor's Note

Integrated Legal Consultants (ILC) was founded in April 2007, in Accra, Ghana, to offer dedicated and innovative corporate legal services while ensuring that the Ghanaian and West African business community and our network of international clients benefit from the highest quality of corporate and commercial legal services that the Practice provides.

As part of this vision, the firm has introduced the publication of newsletters on legal and economic issues that would be of interest to clients and equally affect their transactions. This is our 11th edition.

The outbreak of the Coronavirus (COVID-19) pandemic has had adverse effects on businesses and economies across the globe. Many industries have experienced job cuts and some companies have been forced to shut down. While some companies have had to renegotiate the terms of employment of their employees, others have been left with no option than to unilaterally terminate their employment.

In this issue, we have highlighted certain provisions of the Labour Act 2003 (Act 651) in relation to termination of employment and entitlements upon termination of employment in Ghana.

We hope you find it informative and educative. Your feedback is welcome.

We trust that you are staying safe.

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TERMINATION OF A CONTRACT OF EMPLOYMENT BY AN EMPLOYER IN GHANA

Employment and labour related matters in Ghana are provided for under the Labour Act, 2003 (Act 651), (hereinafter called Act 651) which is the Act that regulates the relationship between employers and employees in Ghana. An employer, having been given the right to employ an individual, also has the right to terminate this employment. The termination must however be done having reference to the prerequisites of termination of employment laid down by Act 651. These prerequisites are embedded in the grounds, timing, mode of termination and entitlements thereto.

1. Grounds of termination

The grounds under which the employer may terminate an employment have been precisely captured by the provisions of Section 15 of Act 651 which empowers termination based on the employee's death before the expiration of his or her employment, medical grounds, incompetence of the employee, the occurrence of an accident or proven misconduct of the employee.

A careful examination of the language used in section 15 of Act 651 begs the simple question, "Does a ground of termination also constitute a reason for termination?" Although the law requires that an employee's contract is terminated by the employer pursuant to any of the grounds provided, same does not constitute a reason for termination. While there have been instances where it has been said that the reason for the termination of a

contract of employment must be clearly stated in the notice of termination, it has been held that in terminating the employment of an employee, the employer is not bound to assign any reason(s) to justify same but must only ensure that the appropriate notice requirements have been duly complied with. In other words, the employer is not bound to designate a reason for the termination if and only if the appropriate requirements have been observed. See *James Odartey Lamptey Mills. Labour Law (ABY Solutions, 1st edition). Page 695.*

This position was firmly established by the court in the case of ***Kobea & Ors v Tema Oil Refinery [2003-2004] SCGLR 1033***, where the court stated as follows:

*"... an employer is legally entitled to terminate an employee's contract of employment whenever he wishes and for whatever reasons, provided only that he gives due notice to the employee or pays him his wages in lieu of the notice. **He does not even have to reveal his reasons much less to justify the termination.**"* (The emphasis is ours)

This position was affirmed by the Supreme Court of Ghana in the recent case of ***Charles Affran v SG-SSB Limited [2019] DLSC 6157***, where the court emphasized that, an employer is not required to give any reasons for the termination of employment. It further stated that termination was not wrongful once the required notice period had been complied with.

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2. Timing of termination

Having considered the grounds for termination, the employer must also adhere to the requirements of the timing as furnished by section 17 of Act 651.

Where the contract of employment is silent on the notice period, the termination may be done by giving the employee one (1) month's written notice or one (1) month's pay in lieu of notice where the employment has run for three (3) years or more. A two (2) week notice, or two (2) weeks' pay in lieu of notice is required where the contract is less than three (3) years. Seven (7) days' notice is required where the contract is weekly. The only instance where termination may be done without notice is where the contract of employment is determinable at will by either party; this termination must be done at the close of any day.

It is noteworthy that, the day of notice is included in the period of the notice.

3. Mode of termination

Section 17 of Act 651 requires that the notice of termination to the employee must be written and should not oral or a blend of both i.e. (written and oral).

4. Entitlements upon termination

Another thing to note is that Act 651 makes provisions for entitlements upon termination. Upon termination, an employee is entitled to be paid any remuneration and deferred payments owed him

before the termination. These payments include but are not limited to salary, Social Security and National Insurance Trust (SSNIT) contribution, accrued bonus if any and reimbursement for expenses incurred on behalf of the company.

In the case of a foreign employee, the employer is further required to pay all expenses and necessities for the journey and repatriation expenses of the employee and accompanying members of his or her family to their home country. These payments are to be made on or before the expiration date of the notice given. This is clearly captured by section 18 of Act 651.

Where no notice is required, all remuneration due shall be paid not later than the next working day after the termination.

Although notice is required by the provisions of section 17(1) of Act 651, section 18(4) of the same Act enables the employer to terminate the contract without notice where the employer pays to the employee a sum equal to the amount of remuneration that would have accrued to the employee during the period of the notice.

While the provisions of sections 15, 17 and 18 may be employed by the prudent employer, the same approach has been clearly stated by section 19 as not applicable, "*where in a collective agreement there are express provisions with respect to the terms and conditions for termination of the contract of employment which are more beneficial to the worker*".

In the light of the effects of COVID-19 on businesses in Ghana and all over the world, it is important for

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employers to take note of the above provisions of Act 651 and comply with them when disengaging or terminating employment in Ghana.

If you require any assistance with respect to employment or other related matters in Ghana, kindly send an email to ilc@integratedlegalconsultants.com

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