

SESSION V

HEALTH AND SAFETY AT WORK.

Historical Development of Health and Safety Law

Occupational Health Development in Ancient Times

The historical development of Occupational Health dates back to the ancient days. During that period, industrialization was in rudimentary form. Unmechanized farming was the main occupation for all nations. Slave labour was extensively used to build many of the wonders of the ancient world in Britain, USA, Egypt, Rome and numerous other countries. For example, in Britain, slaves were used to build underground and surface rail lines, some architectural buildings and their designs among others. Apart from slaves, prisoners of war were also used. They were subjected to harsh conditions in underground mines and queries. They died in large numbers due to poor health and poor working conditions. The inhuman treatment and poor health care continued till the 16th and 17th centuries when the early medical pioneers in the field of health and safety at work emerged. The actions of these pioneer doctors brought some changes in the life of the employees.

Occupational Health Development in Britain

Industrial revolution in Britain marked the origin of occupational health. It dates back to the early eighteenth century, with the invention of the seed drill by Jethro Tull and the use of coke to smelt iron by Abraham Darby, both in 1709. This resulted in the employment of women and children in factories. They had to work long hours under very harsh and unhealthy circumstances.

Many factory owners put profit above the health and safety of their workers. Children and young women were employed in terrible conditions in textile mills and mines. Furnaces were operated without proper safety checks. Workers in factories and mills were deafened by steam hammers and machinery. Working hours were long and there were no holidays. Both layman and medical practitioners by their writings and other ways fought against these ills and pressed seriously for reforms.

Lord Cooper, an aristocrat, as a member of the British Parliament helped to promote legislation which reduced the hours of work and improved the conditions of work of women and young persons

employed in mines, factories and other workplaces. In order to ensure safety and health protection of workers in Britain, Medical doctors were seriously engaged.

The **Factories Act 1802** regulated factory conditions, with particular regard to children in both cotton and woolen mills.

The **1819 Cotton Mills and Factories Act** stated that no children under 9 yrs were to be employed and that children aged 9-16 years were limited to 12 hours' work per day.

In an attempt to establish a regular working day in the textile industry, labour of children was further addressed in the **Factory Act 1833**. The act had the following provisions:

- *Children (ages 14-18) must not work more than 12 hours a day with an hour lunch break. Note that this enabled employers to run two 'shifts' of child labour each working day in order to employ their adult male workers for longer.*
- *Children (ages 9-13) must not work more than 8 hours with an hour lunch break.*
- *Children (ages 9-13) must have two hours of education per day.*
- *Outlawed the employment of children under 9 in the textile industry.*
- *Children under 18 must not work at night.*
- *provided for routine inspections of factories.*

The **Factories Act 1844** further reduced hours of work for children and applied the many provisions of the Factories Act of 1833 to women. The act applied to the textile industry and included the following provisions:

- *Children 9-13 years could work for six hours a day.*
- *Women and young people now worked the same number of hours. They could work for no more than 12 hours a day during the week, including one and a half hours for meals, and 9 hours on Sundays.*
- *Factory owners must wash factories with lime every fourteen months.*
- *Ages must be verified by surgeons.*
- *Accidental death must be reported to a surgeon and investigated.*
- *Thorough records must be kept regarding the provisions of the Act.*
- *Machinery was to be fenced in.*

Originating from the Ten Hour Bill (also known as the Ten Hour Act), **The Factory Act 1847** limited the work week in textile mills for women and children under 18 years of age. The working week contained 63 hours effective 1 July 1847 and was reduced to 58 hours effective 1 May 1848. This law limited the workday to 10 hours.

With the Factory Act 1850, established under the Factory Acts of 1844 and 1847, employers could no longer decide the hours of work. The workday was changed to correspond with the maximum number of hours that women and children could work.

Again, the **Factory Act 1874** reduced the workday in the textile industry to 9 and a half hours.

The Factory and Workshop Act 1878 consolidated all previous Acts. This meant that the Factory Code applied to all trades; no child anywhere under the age of 10 was to be employed; compulsory education for children up to 10 years old; 10-14 year olds could only be employed for half days and that women were to work no more than 56 hours per week.

Next came **the Factory Act 1891** which was followed by the **Factory and Workshop Act 1901**, in which the minimum working age was raised to 12. This act also introduced legislation regarding education of children, meal times, and fire escapes.

The 1937 Act consolidated and amended the Factory and Workshop Acts from 1901 to 1929.

Next came the **Factories Act 1959 and the Factories Act 1961**

The **Factories Act 1961** consolidated much legislation on workplace health, safety and welfare and although some of it remains in force, it has largely been superseded by the **Health and Safety at Work etc Act 1974**.

The Health and Safety at Work etc. Act 1974

In 1970 a Committee on Safety and Health at Work was set up chaired by Lord Robens. Amazingly, it was the first time that any committee had been charged with the task of carrying out a comprehensive investigation of occupational health and safety in the United Kingdom. Until then committees or commissions had been instituted on an ad hoc basis, often in response to a disaster arousing public outcry, resulting into a legislation being entirely reactive in nature.

The Robens Committee reported in 1972 and was severely critical of the existing state of affairs in two main respects. First, the fact that the law had evolved in a piecemeal fashion on an industry by industry basis meant that existing legislation was badly structured. Therefore the Robens Committee decided that what was needed was an umbrella enabling Act, by whose authority specific provision could be made by statutory regulation for particular industries.

The second main problem identified by Robens was apathy. They noted that a large number of accidents each year were the result of stupid and entirely avoidable mistakes. Thus the second major objective for the Robens Committee was to involve every one in safety issues, to convince all parties that it was rather their responsibility too. One of the most controversial aspects of the Robens Committee Report was the idea that some aspects of safety could best be dealt with by voluntary codes of practices agreed with industry rather than by detailed regulation.

The result of the Robens Committee Report was the Health and Safety at Work, etc., Act 1974 (HSWA). This Act defines general duties on *employers, employees and contractors, suppliers of goods and substances for use at work, persons in control of work premises, and those who manage and maintain them.*

Between 1974 and 2007, the number of fatal injuries to employees fell by 73 per cent; the number of reported non-fatal injuries fell by 70 per cent. Between 1974 and 2007, the rate of injuries per 100,000

employees fell by a huge 76 per cent, and Britain had the lowest rate of fatal injuries in the European Union in 2003, which is the most recent year for which figures are available.

The Development of Health and Safety Law in Uganda.

The origin of Uganda's Health and Safety legislation was the British law when Uganda was a British Protectorate. All the British laws were adopted with minor modifications in 1964 just after independence in 1962. Recent efforts have been made to bring the legislation into conformity with the current phenomena and concerns.

Initially, Uganda had the factories ordinance 1919 which provided statutory obligations on the part of the employer. In 1952, the factories ordinance of 1952 was passed as part of the post world war II industrialization policy of the colonial government. The Factories Ordinance which later became the Factories Act commenced in Uganda on 31st March 1953 as an Act to make provision for the health, Safety and Welfare of persons employed in factories and other places.

In April 2006, the new Occupational Safety and Health Act, 2006 was passed which commenced like all other new labour laws on 7th August 2006. Attempts had prior been made to amend the laws but were always defeated by the government.

Employer's Health & Safety Responsibilities at Common Law

1. Introduction

The employer's health and safety responsibilities at common law exist under the law of contract and the law of tort. They can arise under the principle of vicarious liability (tort), for

breach of a direct duty of care (contract and tort) or for breach of statutory duty (tort). If an employer fails to discharge these responsibilities and an employee thereby suffers an injury, the employer will incur civil liability to the employee for damages. The common law rules therefore ensure that injured employees are able to receive compensation. Contrast this with the employer's statutory responsibilities which are primarily intended to prevent accidents occurring in the first place, a failure to discharge these responsibilities leads to criminal liability.

2. Vicarious Liability

An employer will be liable for torts committed by his employees, whilst they are *acting in the course of their employment*. Employers will be liable to those who are injured as a result, and this includes other employees who have been injured by the negligence of their colleagues. However an employer is not vicariously liable for the torts of his independent contractors.

Employees are only *acting in the course of their employment* when they are performing the duties which they have been employed to perform. Performing these duties in an unauthorised manner, or even in a manner that has been expressly prohibited by their employer, will not normally take them outside the course of their employment.

Century Insurance Co v NIRTB [1942] A.C 509

The employee was the driver of a petrol tanker. Contrary to instructions, he lit a cigarette whilst he was transferring petrol from his tanker to the underground storage tank at a garage. He lit the cigarette with a match and then threw the match, which was still alight, onto the ground. An explosion and fire ensued which caused damage to the garage.

Held: The driver's employer was vicariously liable for the loss. The act (of lighting the cigarette) was a negligent way of doing that which he was employed to do (transferring petrol into the tank). He was therefore acting in the course of his employment, even though he was doing so in an unauthorized manner.

***Limpus v London General Omnibus Co* [1862] 1 Hurl. & C. 526**

A bus driver was racing against a driver from a rival bus company to get to the next bus stop first (to collect the passengers who were waiting there for his own company). This was contrary to the express instructions of the company. The bus ran into the bus queue, injuring the passengers.

Held: The bus company were vicariously liable for the passengers' injuries. The driver was acting in the course of his employment, even though he was not doing it in an unauthorised manner.

***Rose v Plenty* [1976] 1 W.L.R. 141**

A milkman was specifically told not to allow children on to his milk float to help him with deliveries. He nevertheless employed a 13-year-old boy as an assistant. The child was injured while helping out on the float.

Held: The employers were vicariously liable for the child's injuries. The employee had been doing what he was employed to do, even though he was not supposed to be doing it with the aid of a child assistant.

In general therefore, as long as an employee performs his duties, he does not cease to be acting in the course of his employment merely because he performs them badly. However, there comes a point where an employee performs his duties so badly that the manner of performance then takes him outside the course of his employment.

***General Engineering Services Ltd v Kingston & St Andrews Corporation* [1989] 1 W.L.R 69**

Firemen in Jamaica were operating a 'go-slow' in support of a pay claim. This meant that it took them twice as long to get to the site of a fire and, in a number of cases, buildings had burnt to the ground and people had been injured by the time they arrived. They were sued by people who had been injured or suffered damage to their property. The firemen argued

that their employer was vicariously liable for the losses as they arose whilst they were performing their duties.

Held: The employer was not liable. The firemen's actions were so serious that they had taken themselves outside the course of their employment.

If an employee does something which is entirely unconnected with his work duties when the tort is committed he is said to be "on a frolic of his own" and therefore acting outside the course of his employment. In these circumstances the employer will not be vicariously liable.

Daniels v Whetstone Entertainments Ltd [1962]

A nightclub bouncer forcibly ejected Mr Daniels from the premises following a disturbance. Once outside, the bouncer assaulted him.

Held: The bouncer's employer was vicariously liable for the injuries caused when Daniels was removed from the premises, but not for those sustained in the later assault. The assault had been outside the scope of his employment.

Beard v London General Omnibus Co [1900]

A bus conductor, on his own initiative, turned round one of his employer's buses at the depot. Whilst reversing the bus he ran over a colleague who suffered injuries. The bus conductor had been told that he should not drive the buses.

Held: The employer was not vicariously liable for the conductor's negligence. He had performed an unauthorised act and was not therefore acting in the course of his employment.

Hilton v Thomas Burton (Rhodes) Ltd [1961]

Hilton was employed by a building company. One lunchtime he went to the pub with his fellow workers in the company's van. On the way back from the pub the van crashed due to the negligence of the driver and Hilton (a passenger) was killed. Hilton's wife sued the company on the basis that they were vicariously liable for the van driver's negligence.

Held: The Company was not liable. Hilton and his colleagues had been on "a frolic of their own" when the accident occurred and were not therefore acting in the course of their employment.

An employer is not usually liable for the actions of independent contractors, which is one of the main reasons for needing to distinguish them from employees. However, there are exceptions. If the employer specifically instructs the contractor to perform the action which is tortious, he will be liable. Where there is strict liability the employer can be held responsible for things done by independent contractors. A good example is ***Rylands v. Fletcher (1866)*** which established the rule of strict liability for damage done by things escaping from land where their accumulation was a non natural user of the land. The land owners had employed independent contractors to build a reservoir on their land, through the contractor's negligence the water escaped and flooded a mine on neighboring land. The landowners, as employers of the independent contractors, were held liable.

3. Employer's Direct Duty of Care

Employers owe a common law duty to take reasonable care of their employees. This duty is owed in tort and also in contract, under an implied term in every contract of employment. It is a personal non-delegable duty. This means that the employer will remain liable, even if he has delegated the performance of the duty to someone else.

The duty is only a duty to take reasonable care and not an absolute duty to make employees safe at any cost. The law allows employers to balance the risk of accidents occurring against the cost and inconvenience of preventing or reducing the likelihood of such risk. It requires the employer to provide four things for his employees:

- competent fellow employees

- a safe place of work
- safe plant and equipment
- a safe system of work

3.1. Competent Fellow Employees

This duty overlaps with the principle of vicarious liability. If an incompetent colleague injures an employee then the employer will be directly liable for the injury if the colleague's incompetence is due to the employer's negligence. This will be the case, whether or not the incompetent colleague was acting in the course of his employment.

The duty requires employers to recruit capable staff and to provide adequate training and supervision to ensure that they are performing their tasks competently.

Hawkins v Ross Castings Ltd [1970]

Mr Hawkins was badly injured when a colleague accidentally spilled molten metal onto his legs. The colleague was a 17-year-old Asian youth who spoke very little English and had not been trained in the task of carrying and pouring molten metal.

Held: The employer was liable for Hawkins' injuries. He was in breach of his duty of care as he had failed to provide a competent fellow employee to work with him.

The duty also requires employers to dismiss employees who are known to represent a danger to their colleagues.

Hudson v Ridge Manufacturing Co Ltd [1957] 2 Q.B. 348

Hudson's wrist was broken when a colleague wrestled him to the ground as a practical joke. The colleague was a known practical joker and had a reputation for playing pranks / mischief. The employer had been aware of this for four years but had done nothing to prevent him from committing further pranks.

Held: The employer was liable for Hudson's injury. He had breached his duty to take care for Hudson's safety by failing to remove the practical joker when it became obvious that he was a danger to his fellow employees.

Smith v Crossley Brothers [1951]

Two motor mechanics played a practical joke on their colleague, Smith. They removed his trousers, inserted a rubber hose into his anus and filled him with compressed air. He suffered severe internal injuries.

Held: The employer was not liable for the injuries. The two mechanics had no history of practical jokes and the employer therefore had no reason to suspect that they were a source of danger to colleagues. The incident had not therefore been predictable or preventable by anything the employer could have done. (Note that the employer was not vicariously liable either as the mechanics were on a "frolic of their own").

3.2. A Safe Place of Work

This duty applies in respect of the employer's own premises but also to other premises where his employees work.

General Cleaning Contractors v Christmas [1953] A.C. 180

Christmas was a window cleaner working for a window cleaning contractor. The firm provided safety belts for its employees but on one building there were no hooks to attach to the belts. The firm was aware of this situation. Christmas was injured while cleaning windows on that building. A defective window sash fell onto his fingers and caused him to lose his grip. As a result he fell to the ground and suffered serious injuries. He sued his employer for failing to provide a safe place of work.

Held: the employer was liable. It was aware of the danger surrounding the lack of hooks on the building and should not have continued to send its employees to work there.

3.3. Safe Plant and Equipment

All machinery, tools and equipment used by the employee must be reasonably safe for use.

Bradford v Robinson Rentals [1967]

A van driver was required to make a long journey during some extremely cold weather. His employer knew that the heater in the van was broken but insisted that the driver make the journey. The driver suffered frostbite.

Held: The employer was liable for the driver's injuries. He had breached his duty to provide safe plant and equipment.

3.4. A Safe System of Work

This duty relates to safe working methods. It is a very wide duty and includes a number of issues including the layout of the workplace, warnings about potential hazards, the provision of safety equipment and training & supervision in its use. Employers must warn employees about potential hazards that they would not otherwise be able to avoid. However, they are entitled to assume that employees have some common sense and so do not have to warn them of all dangers.

O'Reilly v National Rail [1966]

A group of scrap-yard employees found an unexploded bomb in their workplace. Several men challenged O'Reilly to hit the bomb with a hammer to see what would happen. He hit the bomb and they were injured when it exploded. They sued their employer, saying that they had been provided with no guidance as to how to deal with this type of situation.

Held: The employer was not liable. He was entitled to assume that they would have had sufficient common sense not to hit the bomb with a hammer.

Baker v Clarke [1992]

An experienced electrician was injured when he failed to lock the wheels of the mobile scaffolding he was using.

Held: The employer was not liable. He did not have to provide constant reminders of the risks involved in putting up scaffolding, or the likelihood of harm if it was not accurately assembled.

Employers must provide appropriate safety equipment and advise employees of its whereabouts

Finch v Telegraph Construction & Maintenance Co Ltd [1949]

Finch was employed as a grinder and was injured when a piece of flying metal struck him in the eye. The employer had acquired the necessary protective goggles but had never told the employees where they were kept.

Held: The employer was liable for the employee's injury.

In many situations the employer will be under no duty to insist that employees actually use the safety equipment

Qualcast (Wolverhampton) Ltd v Haynes [1959]

An employee was injured when he was splashed on the legs with molten metal. The employer had provided him with protective spats but he had chosen not to wear them.

Held: The employer was not liable. By making the spats available to the employee he had done all that was reasonable in the circumstances.

Where the risk which is being protected against would not be obvious to the employee, or where the potential injury would be serious, the employer may be under an additional duty to insist that the employee uses the safety equipment.

Berry v Stone Maganese Marine Ltd [1971]

The employee was working in an environment where the noise levels were dangerously high. The employer provided ear defenders but the employee chose not to wear them. The employee suffered a loss of hearing as a result.

Held: The employer was liable. He should have alerted the employee to the dangers of what he was doing and insisted that ear defenders were worn. The seriousness of the potential injury and the risk of it occurring would not have been obvious to the employee so in this situation the duty went beyond simply making the defenders available.

Employees must also exercise some responsibility for their own safety. Employers are not under a duty to provide constant reminders to staff about the risks involved in doing their jobs.

Smith v Scott Bowyers Ltd [1986] I.R.L.R.315 CA

Smith was injured when he slipped on a greasy floor. His employer knew that the floor was dangerous and had provided all employees with wellington boots with special gripping soles. The employer issued replacement wellingtons to staff on request. The soles on Smith's Wellingtons had become dangerous as they had worn smooth but he had never requested a replacement pair.

Held: The employer was not liable. He was not under a duty to inspect the wellingtons every day to see if they needed replacing and was entitled to assume that his employees would take some responsibility for their own safety.

The employer's duty to provide a safe system of work extends to the avoidance of psychological harm.

Johnstone v Bloomsbury Health Authority [1991] 2 W.L.R. 1362 CA.

Johnstone was a junior doctor working for the Health Authority. His contract required him to work 40 hours per week and to be on call for a further 48 hours per week. As a result he suffered ill health through overwork. He claimed that, by requiring him to work an excessive number of hours, the Health Authority was in breach of their duty to provide him with a safe system of work.

Held: The Authority was held liable. The express term in the contract about working hours had to be read in the context of the employer's implied duty to take reasonable care for the health of employees.

***Walker v Northumberland County Council* [1995] 1 ALL E.R. 737**

Walker was the manager of the Council's social services department. He suffered a nervous breakdown due to overwork. On his return to work he discussed his health with the Council and they promised to reduce his workload. This did not happen. As a result he had a second nervous breakdown. He then sued the Council for failing to take care of his health.

Held: The Council was liable for his psychiatric injuries. The second breakdown was entirely foreseeable and the Council had failed to exercise care to prevent it happening.

4. Defences

There are two particular defences on which an employer faced with liability may seek to rely; contributory negligence and *volenti non fit injuria*

Contributory negligence.

At Common law, if a claimant claiming for negligence or breach of statutory duty was partly to blame for the accident, this was a partial defence to the employer. The court is not concerned solely with whether the claimant's conduct actually contributed to the accident but explicitly with how far this was the employee's fault.

Lord Wright in **Caswell v Powell Duffryn (1940) A.C. 152 H.L.**, stated,

‘What is all important is to adapt the standard of what is (contributory) negligence to the facts, and to give due regard to the actual conditions under which men work in a factory or mine, to the long hours and the fatigue, to the slackening of attention which naturally comes from constant repetition of the same operation, to the noise and confusion in which the man works, to his preoccupation in what he is actually doing, at the cost of some inattention to his own safety’.

Consent

If you willingly consent to take a risk you cannot complain if the danger materializes; this is the defense expressed in the maxim *volenti non fit injuria*.

In **ICI V Shatwell (1965) A.C 656** a team of shot firers were required by regulation only to carry out detonations from behind cover. On one occasion the wire was not long enough for them to get behind cover. One went to get more wire, but while he was away the other two decided to go a head with the testing in the open. Both were injured in the subsequent explosion, but it was held that the employer was not liable, for with full knowledge of the danger, they had deliberately decided to run the risk.

THE OCCUPATIONAL HEALTH AND SAFETY LAW UGANDA TODAY.

Sources

1. The Constitution of the Republic of Uganda 1995
2. The Occupational Health and Safety Act No. 9 of 2006
3. ILO Conventions 87
4. Cases

1.1 The Constitution of the Republic of Uganda

The constitution of Republic of Uganda recognizes the importance of good working environment of all workers and their rights. Article 34(4) constitution of Republic of Uganda (as amended) not only looks at the labour force but also children who are supposed to be protected from social or economic

exploitation. The article pronounces itself that children are not supposed to do work that is likely to be hazardous or interfere with their education, health, physical, mental spiritual or moral development.

Article 39 gives workers a right to a clean and healthy environment while article 40(1) empowers Parliament to enact laws to provide for the rights of persons to work under satisfactory, safe and healthy conditions.

1.2 The Occupational Safety and Health Act No. 9 of 2006

In 2005 a bill on Occupational Safety and Health was brought to Parliament ending into the enactment of Occupational and Health Act, 9, 2006 with the over all purpose of safe guarding safety and health of all workers in all work places in Uganda. The Act defines the work place as all places of work and all sites and areas where work is carried out including not only the permanent and indoor stationery places of work such as factories, shops but also temporary places of work such as civil engineering sites, open air places such as fields, forests, roads, oil refineries and mobile places of work such as tractors and excavators, ships, galleys, freight desks of aircraft, and without exception, places where workers are found as a consequence of their work including canteen, living quarters on board ships.

We can therefore safely conclude based on this definition that the scope of the OSHA would extend to wherever workers are found as a consequence of their work.

The Act repealed the Factories Act Cap 220.

The main objectives of the Act are:

- a) To operationalise articles of the constitution namely, 34(4), 39, 40 (1) put in ascending order by making provision for health, safety and welfare of persons in employment.
- b) To spell out steps to be taken before operating a work place of all sorts
- c) Spell out duties and obligations of both employers and employees in ensuring safety and health for all at work places.

d) Stressing measures and methods that should be put in place to ensure safety and health at work.

ADMINISTRATION AND ENFORCEMENT OF ACT

(Part II Sec 3-12)

The Commissioner for Occupational Safety and Health shall be responsible for enforcing the provisions of the Act. It is noticeable that the Act has enhanced the powers of the Commissioner and his/her team of inspectors who shall have the power to enter any workplace whether day or night to do any of the following acts:

- (i) Inspection of a workplace-S.4
- (ii) Require the production of registers certificates, notices or any documents under the Act.
- (iii) To require any person to give information regarding the occupier of the workplace.
- (iv) To examine any person or to require the examination of any person.
- (v) In case of an occupational physician to carry out medical examinations as may be necessary.
- (vi) To take measurements and photographs and make such recording as found necessary.
- (vii) To take samples of any article or substance found in any premises or its vicinity.
- (viii) To dismantle or to test any article or chemical substance found on the premises.
- (ix) To detain any article or substance discovered on the premises.
- (x) To prosecute before a magistrate any breach of the Act.-S.6
- (xi) To issue prohibition orders.-S.94

In exercising the aforementioned powers an inspector shall be entitled to be furnished with means necessary for entry, inspection, examination, inquiry and taking of samples for the exercise of his/her

powers in relation to the workplace. It shall be an offence to obstruct, delay, withhold or conceal information from an inspector whilst carrying out his/her duties. Inspectors shall further not be liable for any damage caused to articles inspected in the course of their duty-S.74

In a bid to better administer the Act all workplaces are required to be registered not less than one month before use (Sec. 84) and a certificate issued to the occupier in the prescribed format upon payment of the requisite fees.-(Sec. 41)

Any construction at or of workplaces or alterations of existing buildings shall have to be first approved by the Commissioner.-S.42

The enhanced powers of the inspectors under the act naturally exposes them to confidential information of employers and manufacturers. The Act appropriately imposes a duty of confidentiality on these persons and any breach of the same would be a criminal offence for which a culprit is liable to a fine of 150 currency points or imprisonment not exceeding 26 months.-Sec.106. It is our considered opinion that the penalty does not offer sufficient protection to employers who could easily have their intellectual property duplicated by unscrupulous inspectors for onward transmission to fellow competitors or speculators at a much higher consideration than what would make one worry about a fine of 150 currency points or a prison sentence of 26 months in jail.

The Act establishes the Occupational Safety and Health Board which shall give expert advice to the Minister on matters of occupational safety and health, welfare and the working environment-Sec 10. The Minister shall also have the option of appointing advisory panels to give assistance in workplace process, chemical, hazard, injury and disease.-Sec 11

Prohibition Order: The most conspicuous aspect of the inspectors enhanced powers is their power to issue prohibition orders against any employer or worker, prohibiting the use of any machinery, plant, appliance or fitting that may threaten the health and safety of any person.-S.94(1)

A person aggrieved by an order of prohibition may by complaint to magistrate apply for the same to be set aside or varied.-S.94 (2)

PART III: GENERAL DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF EMPLOYERS (SEC 13-22)

The Act imposes duties on the employer owed both to workers and the general public. These duties are categorized as general duties variously but become more specific depending on the category of employers i.e. manufacturing, suppliers, chemical and hazardous industries etc

These are largely modeled on the common law duties of care, but may require a rather higher standard with the introduction of the “*as far as is reasonably practicable*” standard. Probably the biggest innovation of the Act, the “so far as is reasonably practicable” standard introduces a new twist to the standard of care of an employer/occupier.

The overriding duty of care is imposed on the employer by S.13(1)(a). It is the responsibility of an employer:

(a) to take, as far as is reasonably practicable, all measures for protection of his or her workers and the general public from the dangerous aspects of the employer’s undertaking at his or her own cost.

(b) To ensure, as far as is reasonably practicable, that the working environment is kept free from any hazard due to pollution by –

(i) employing technical measures applied to new plant processes in design on installation or added to existing plant or processes; or

(ii) employing supplementary organizational measures.

The second part of S.13 typically goes on to prescribe the employers duties more specifically, thus illustrating our earlier contention that compliance of specific duties may not be enough to discharge the general standard in the Act. Reminder of the section stipulates the duties as being: – “(2) without prejudice to the generality of an employers duty in subsection (1) the matters to which the duty extends include in particular –

(a) the provision and maintenance of plant and systems of work that give, as far as is reasonably practicable, a safe working environment including its vicinity;

(b) arrangements for ensuring, as far as is reasonably practicable, safety and absence of risks to health, in connection with the use, handling, storage and transport of articles and substances;

(c) the provision of adequate and appropriate information, instructions, training and supervision necessary to ensure, as far as is reasonably practicable, the safety and health of the employees, and the application and use of occupational safety and health measures, taking into account the functions and capabilities of the different categories of workers in an undertaking;

(d) as far as is reasonably practicable, regarding any workplace under an employer’s control, the maintenance of the workplace in a condition that is safe and without risks to health, and the provision and maintenance of means of access to and exit from the workplace, that are safe and without such risks;

(e) the provision and maintenance of a working environment for the workers, that is, as far as is reasonably practicable, safe, without risks to health and which is adequate, regarding facilities and arrangements for the welfare of workers at work;

(f) the provision of correct information of the real and potential dangers of substances used in an undertaking including any toxicity tests and environmental impact assessment involved in the use of the substances, to all concerned;

(g) the provision, where necessary, of adequate personal protective equipment to prevent, as far as is reasonably practicable, the risks of accidents or of adverse effects on health.”

The reasonably practicable standard may invariably turn out to be a sword and a shield at the same time for both the worker and the employers respectively. In other jurisdictions like in England, the most common defence for employers against actions under the equivalent of OSHA is that it was reasonably impracticable to carry out their duty. Courts have thus established a standard for applying the defence. In **Edwards v National Coal Board [1949]1 KB 704**29 Asquith LJ stated –

“The onus was on the defendants to establish that it was not reasonably practicable in this case for them to have prevented a breach of S.49. The construction placed by Lord Atkin on the words „reasonably practicable” in **Coltneccion Co. V Sharp [1938]AC 90** seems to me with respect right. Reasonably practicable is a narrower term than „physically possible” and seems to me to imply that a computation must be made by the owner, in which the quantum of risk is placed on one scale and the sacrifice involved in the measures necessary for averting the risk (whether in money, time or trouble) is placed in the other, and that if it be shown that there is a gross disproportion / imbalance between them – the risk being insignificant in relation to the sacrifice – the defendants discharge the onus on them.....”.

The Act imposes a strict obligation on the employer and occupier especially in hazardous sectors to preserve the environment around them including atmosphere, lakes, rivers, soil etc. S.18 imposes a duty on the employer to monitor and control the release of dangerous substances into the environment.

A host of other provisions require the employer/occupier to ensure that the vicinity of his workplace is free from health risks arising from his undertaking.

The statutory duty of care is not confined to safeguarding employees. S.23 extends this duty to persons not in the employers employment who may be subject to the risks of the employer's undertaking. A similar obligation is placed on self-employed persons.

Much as the OSHA introduces a rigorous regime of strict regulation of the workplace, it is manifestly evident that Parliament desired that employers who can, ought to regulate themselves probably saving the wrath of the Act for the more errant workplaces and or sectors. A number of innovations have been introduced in this regard being:

i. Written Statement of Safety and Health Policy, S.14.

ii. Worker participation in Health and Safety S.17.

iii. Safety Representatives S.15.

iv. Safety Committees S.16.

v. Employers duty to supervise health of workers, S.21.

i. Employers duty to monitor and control release of dangerous substances in environment, S.18.

EMPLOYERS DUTIES VIS-À-VIS LANDLORD/TENANT RELATIONSHIP

(PART IV SEC23-27)

The OSHA introduces a new unique arrangement of responsibility on both employers/occupiers vis-à-vis owners of premises. To begin with the primary responsibility to provide safe premises to which the OSHA applies shall be upon the employer-S. 13

The OSHA seems to have anticipated that a great number of employers are tenants with limited control over their premises under their leases. For this reason S.26 appropriately places the duty to provide safe premises to the extent of the persons control over the premises. The section does not mention the term employer, or occupier but tactfully uses the term „person“ leaving of the duty upon the one with “control over the premises”. It can be said therefore that where a landlord reserves much of the control over the exit, entry and other common areas, he automatically assumes a duty of care under the Act. s.26 (2)

Under no circumstances however would this derogate on the employers primary duty to provide safe means of access and exit.-S.13 (d)

Landlords who chose to reserve lots of powers and control under leasehold agreements will have to think twice. Short of this they will be inviting statutory responsibility under the Act. Potentially employees and others owed duties under the OSHA could sustain a cause of action for breach of statutory duty against such landlords.

S.27 further obliges the controller of the premises to keep it free and the surroundings from pollution. We would argue that a landlord retaining substantial control over premises on which a tenant employer is dispensing polluted substances would have invited responsibility in this regard.

The OSHA uncharacteristically grants an occupier not being an owner of a workplace the remedy of applying to court to set aside or modify terms of a tenancy agreement to enable him or her comply with the Act.-Sec. 116 In this regard the OSHA seems to put the provisions of the OSHA above the age old doctrine of freedom of contract. It remains to be seen how this power will be used by the courts. In our humble opinion, this provision is unconstitutional and contravenes the right to property.

The OSHA further grants the occupier the remedy to apply to court for apportionment of expenses between owner and occupier where alterations on the workplace are carried out.-Sec 117 The foregoing provisions should be of concern to commercial landlords whilst drawing leasehold agreements. Equally the occupier not being owners should be concerned of their own responsibilities over a workplace before they sign up off a lease agreement considering their obligations under the OSHA.

WORKERS RIGHTS AND DUTIES (PART VI SEC.35-39)

The duties under the Act are not only about the employer. S.35 imposes on the employee, the duty while at work:

- i) To take responsible care for the health and safety of himself and others who may be affected by his/her acts or omissions at work.

- ii) As regards any duty or requirement imposed on an employer or any other person by statutory provision to cooperate with the employer as far as is necessary to enable the duty or requirement to be performed or complied with.

Employees are further required to report dangerous situations to their immediate supervisors where they have reasonable grounds to believe there is an imminent danger to life and health in the premises.- S.36

The OSHA makes it an offence to willfully misuse or refuse to use an appliance, convenience or other thing provided under the Act for securing the health safety and welfare of persons.-S.99

RIGHTS OF WORKERS

The several duties bestowed upon the employer and this Act naturally create rights accruing in favour of the worker. The OSHA however specifically and unequivocally stipulates the employee's right to move away from a dangerous situation, the right not to lift heavy loads likely to cause injury and the right not to be punished as result of anything done under the Act. S.38. Any dismissal in this regard would be rendered wrongful.

HEALTH AND WELFARE (Part VIII)

GENERAL SAFETY REQUIREMENT (Part IX)

FIRE PREPAREDENESS (PART X)

MACHINERY, PLANT AND EQUIPMENT (Part XI)

The law under Sec. 61 requires the employer to fence every moving part of as machine and flywheels of their machinery. The fences should be such as to prevent workers or their cloth from being engulfed into the moving parts of machines.

In **Groves vs. Wimborne [1898] 2QB 402**, the plaintiff was a boy employed in the service of the defendant. Amongst the machinery in the works was a steam with which revolving cog-wheels, at which the plaintiff was employed. The cog-wheels were dangerous to persons working unless fenced. There was evidence that there had originally been a guard or fence to these cog-wheels, but it had for some reason been removed, and there had been no fence at the wheels while the plaintiff was employed at the winch / hoist, a period of about six months. While the plaintiff was so employed, his right arm had been caught by the cog-wheels, and was so much injured that the forearm had to be amputated.

It was held by the Court of Appeal that an action will lie in respect of personal injury occasioned to a workman employed in a factory through a breach by his employer, the occupier of the factory, of the duty to maintain fencing for dangerous machimnery imposed by the Act. That the defence of common employment is not applicable in a case where injury has been caused to a servant by the braech of an absolute duty imposed by statute upon his master for his protection.

Common employment was a historical defence in English tort law that said workers implicitly undertook the risk of being injured by co-workers, with whom they were in ‘common employment.’

HARZADOUS MATERIALS (Part XII)

CHEMICAL SAFETY AND SPECIAL PROVISIONS (Part XIII)

CRIMINAL LIABILITY UNDER OSHA

The contravention of any provision in the OSHA by the owner or occupier regarding a workplace is made an offence under the general offences provisions under S.93.

Where the owner or occupier is a company or cooperative society or body of persons and it is proved to have been committed with the consent or connivance or neglect of a chairperson, director, manager, secretary or other officer of the company, the cooperative society or body of persons shall be deemed to have committed the offence along with that particular official.

The OSHA therefore creates corporate criminal liability which apparently shall be suffered by the officer directly responsible.

PROCEEDINGS UNDER OSHA

Proceedings under this Act regarding the commission of offences or where the actions of the inspector under the Act are challenged, shall be in the Magistrates courts presided over by a Chief Magistrate or Magistrate Grade I.S.110 S.102 of the OSHA empowers the Magistrate to impose fines in cases of fatal and non fatal injuries against employers and the same may be applied to the benefit of injured persons or their families.

Fines imposed in this regard and set aside for the benefit of the injured persons shall by no means affect the rights of the injured employee under the Workers Compensations Act.-Sec. 118

1.3 ILO Conventions on Safety and Health Standards

ILO sets standards for minimum safety and health standards. There are Conventions which Uganda has ratified.

Labour Inspections Conventions, 1947 (No.81)

Ratified by Uganda, it makes provision for the inspection of industries.

Asbestos Convention, 1986 (No.162).

It is intended to regulate activities relating to the exposure of workers to Asbestos.

Underground Work (Women) Convention, 1935 (No.35)

It prohibits employment of female in underground work in any mine

Medical Examination of Young Persons (Underground Work) Convention, 1965

It concerns the medical examination of young persons for fitness prior to underground work.

Employment Policy Convention, 1964 (No. 122)

It requires member states to have an active employment policy that is designed to promote productive and freely chosen employment.

SESSION VI

WORKERS COMPENSATION

This deal with compensating workers for the injuries suffered and scheduled diseases incurred in the course of their employment. Compensation is to make good to the injury suffered. The law developed from tort system which rarely provided compensation to the victim of an industrial injury because of the three doctrinal defenses which had evolved for the protection of employers, that is;

- i. The doctrine of common employment which denied liability for the negligence of fellow worker. Common employment was a historical defense in English tort law that said workers implicitly undertook the risk of being injured by co-workers, with whom they were in ‘*common employment*.’
- ii. Contributory negligence doctrine which denied liability where the worker was partly responsible for his or her injuries
- iii. Volenti non fit injuria which was interpreted as denying liability for injuries occurring from a known and obvious risk.

The effect of these doctrines were reduced with time but most significantly with the enactment of the Worker’s compensation Act. This was because the Act moved away from common law principles that liability must be based on fault and instead conferred a right to compensation on any worker for any accident arising out of and in the course of employment. However the Act didn’t provide full compensation but rather it was assessed on the basis that an employee was to bear half the loss. However by the 1940s it was possible for compensation to be as much as $\frac{3}{4}$ of total earnings.

The phrase ‘*out of and in the course of employment*’ was interpreted as meaning that the employment must not have been only a cause in fact of the injury but also must have been some relationship between the employment and the injury. Under the Act, one of the defenses available to an employer was similar to contributory negligence, that is, compensation was denied if the accident was due to the worker’s serious and willful default. However this defense was later excluded by statute in cases of serious and permanent disability and in fatal cases. One of the difficulties that arose under the Act was with regard to cases of diseases where knowledge about the causes of many diseases was rudimentally.

Employer’s liability in Common law

It is the duty of an employer acting personally or through his agent to take reasonable care for the safety of his workers and other employees in the course of their employment. In the case of **Wilson and Clyde Coal v. English [1938] AC 57**, it was held that the employer’s duty extends to providing a safe system of work , and that the duty extends in particular to the safety of place of work, plant and machinery and methods and conduct of work.

In the case of **Wilson v. tynesiee window cleaning Co. [1968] 2 ALLER, 265**, it was held that the master's duty is general and it is to take all reasonable steps to avoid risk to his servants, as such, if all due care has been exercised and the worker man sustains injury through inherent risk of employment he cannot recover against the employer because the employer is not liable in the absence of negligence.

The liability of employer is based both in tort and in contract. In tort this is on the basis of principle of duty of care which arises because of the relationship that exists between an employer and an employee. As such an employer owes a duty to his or her employee. In contract it is based on implied terms of contract of employment, that is, the duty to provide a safe place of work and system.

Although the employer owes a duty of care to all his or her employee, it should be emphasized that the duty is owed to the employee as an individual. Therefore the employer must take into account any special weakness or needs of a workman which are known or ought to be known by the employer. This therefore means a higher duty may be owed to some employee than others. The case of **Paris v. Stepney Borough Council (1951) AC 367** was a decision of the House of Lord that significantly affected the concept of standard of care in common law. The plaintiff Paris was employed by then Stepney Borough Council as a general garage-hand. He had sight in only one eye, and his employer was aware of this. The council only issued eye protection goggles to its employees who were welders or tool grinders. In the course of his usual work, Paris received an injury to his sighted eye. He sued the council for the tort of negligence. It was held that the defendants were aware of his special circumstances and failed in their duty of care to give him protective goggles.

As such it is optional to claim either under tort or contract when relying on common law.

Persons to whom duty is owed under Common law

The duty is owed to employees and employment relationship must in fact exist. The employer's duty is owed to each employee as an individual and hence must take into account any special weakness or peculiarity of a worker that is known to the employer.

The duty is also owed to acts of fellow servants or employees. It is a general rule of tort that an employer is liable for acts or omission of his servant acting in the course of his employment. In the

case of **Broom v. Morgan 1951 I QB 597**, B and C were husband and wife who were employed by the same firm A. B negligently injured C at the time when the law did not allow wives to sue their spouses, but A was held liable for the injury nonetheless.

Acting in the course of Employment

This means that the servant is acting in the course of his or her employment whenever he is doing the employer's work whether he does it negligently or fraudulently for as long as it is within the scope of his work.

Century Insurance Co v Northern Ireland Road Transport Board [1942] A.C 509

The employee was the driver of a petrol tanker. Contrary to instructions, he lit a cigarette whilst he was transferring petrol from his tanker to the underground storage tank at a garage. He lit the cigarette with a match and then threw the match, which was still alight, onto the ground. An explosion and fire ensued which caused damage to the garage.

Held: The driver's employer was vicariously liable for the loss. The act (of lighting the cigarette) was a negligent way of doing that which he was employed to do (transferring petrol into the tank). He was therefore acting in the course of his employment, even though he was doing so in an unauthorized manner.

Acting in the course of employment is also extended to matters arising while the worker is coming to the place of work or leaving it. It also extends to the servant doing anything reasonably incidental to his or her work.

Statutory Provisions

The Worker's Compensation Act Cap 225 provides for compensation of workers for injuries suffered and scheduled diseases incurred in the course of their employment.

It deals with matters like persons entitled to compensation, notice of accident and insurance. It came into force in 2000; it's relatively new and meets ILO Standards. It replaces the old Workman's Compensation Act of 1964

Application

Section 2 provides for application of the Act to all employments including government workers except active members of the armed forces.

The Act provides for levels of incapacity for which compensation is available to include; total incapacity, partial incapacity and permanent total incapacity.

Sec. 1 (t) defines “total incapacity” to mean incapacity, whether of a temporary or permanent nature, which incapacitates a worker for any employment which he or she was capable of undertaking at the time when the accident occurred.

Sec. 1 (2) defines “partial incapacity” to include every injury specified in the Second Schedule to the Act except an injury or combination of injuries in respect of which the percentage or aggregate percentage of the loss of earning capacity specified in that Schedule in relation to that injury or those injuries amounts to 100 percent or more shall be taken to result in permanent partial disability.

Sec. 1 (3) provides that for the purposes of the definition of total incapacity in the section, “permanent total incapacity” shall be deemed to result from an injury or from any combination of injuries specified in the Second Schedule to the Act where the percentage or aggregate specified in that Schedule in relation to the injury or injuries amounts to 100 percent or more.

Compensation for Injuries

Sec 3 provides that an employer shall be liable to pay compensation under the Act for injury or accident arising out of and in the course of employment. The exception to this is in subsection 2 that an employer shall not be liable if the injury doesn’t result in permanent incapacity or it does not incapacitate the worker for at least three consecutive days.

Subsection 3 provides that an act is deemed to be done out of and in the course of employment when a worker acts to protect any person or property on the employment premises. The expression ‘*within the*

course of employment' has been subject of judicial and legal interpretation over many years. **Halsbury's statute 4th Edition defines** it in these words;

'In the course of employment does not mean during the currency of engagement but means in the course of the work which the workman is employed to do and what is incidental to it'.

The above definition was adopted in the case of **R vs. Industrial Injuries Commissioner Ex. P. AEU [1966] 2 Q.B. 31** by Solomon L.J when he said:

'I assume that in law a man is working in the course of his employment not only when he is doing that what he is employed to do but when he is doing something for purposes of his own which is reasonably incidental to his employment'.

In the case of **Virani vs Dharamsi [1967] EA 132** , the defunct Court of Appeal for Eastern Africa stated that an action arises out and in the course of employment if it results from an act which the employee is employed to do even if the employee is adopting a wrong method of doing the act or doing the act in the wrong manner.

Subsection 4 provides that any injury or accident while the employee is traveling directly to or from the place of work for the purpose of employment shall be deemed to be an accident arising out of and in the course of employment. However an employee is supposed to show that such travel was direct.

Subsection 6 provides that the employer will be liable to pay compensation whether or not the incapacity or death of the worker was due to his or her recklessness or negligence.

Subsection 7 presupposes that any accident that arises in the course of employment shall unless or otherwise be presumed to arise out of employment.

Subsection 8 provides that compensation in cases of permanent incapacity or death shall, in principle, be paid in the form of periodic payments; otherwise, they may be awarded in lump sums as provided under the Act.

Scheduled diseases

Under sections 27 an employer is liable to pay compensation to a worker who suffers from a scheduled disease which manifests itself either within the 24 months immediately prior to the date of illness or death, or due to the course of employment.

Under s.29, the employer who last employed the worker, is one responsible to pay the compensation except where it can be established that the disease was contracted through a gradual process whereby other previous employer would also be liable to compensate the employee.

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It should be noted under s.31 there is a presumption that where a worker is disabled by or dies of any disease listed in the 3rd schedule, it shall be presumed that the disease was due to the nature of employment.

Statutory Obligations of the Employer under the Act

Section 11 provides that an employer who has notice of the worker's accident shall as soon as reasonably possible after the date on which notice has been given arrange to have the worker medically examined by a qualified medical practitioner, at no charge to the worker. During the period of temporary total incapacity, the employer shall be liable to pay the costs of medical care. However under section 17, this does not preclude a claim for damages.

Section 18 requires the employer to insure himself in respect of any liability which he or she may incur to any worker. (Worker's compensation policy)

Section 24 provides that where an accident occurs entitling the worker compensation, the employer is obliged to defray / pay the reasonable costs incurred by the worker for medical expenses, transport and incidental expenses and where a worker dies burial expenses

Section 28 requires an employer to report the fact that any of his employees is suffering from scheduled diseases. The importance of this is that some of the diseases arise from process of work so the inspector can devise preventive measures to protect other workers.

Sec. 20 the bankruptcy of the employer does not prevent compensation.

Sec. 21 a contract with the aim to cause the worker to relinquish any right to compensation under the Act is null and void

Sec. 23 compensation payable under the Act shall be capable of being assigned, charged or attached

Sec. 29 liability in respect of scheduled diseases can be shared by several previous employers.

Other sections

Sec 27, 29, 31

Sec 4,5 and 6 how compensation is calculated.

Sec 4 calculation of compensation is monthly earning in case of family, if no child it is medical and burial expenses.

Sec 5 compensation in permanent incapacitation.

Sect 6 permanent incapacitation to second schedule x 60times.

SESSION VIII

LABOUR DISPUTES IN UGANDA.

LABOUR UNIONS AND LABOUR DISPUTES.

Historically, trade disputes / labour disputes were generally considered illegal, i.e., not entertained because Trade unions themselves or the so called worker's combinations were illegal. For instance in *R vs. Mawbey (1796) 6 T.R 619*

For along time, there were statutes that prohibited workers combination or association until the passing of the combination laws appeal Act 1824 which liberalized some extent the right to organize. It was followed by the combination laws appeal Act (Amendment) Act. The 1825 defined combination in such a manner as to free them from criminal liability regarding the determination of wages and hours of work.

The Act didn't legalize strikes, lockouts or picketing, instead it penalized violence, threats and intimidations and also created offences of molestation and obstruction. Equally the judges widened the common law (criminal) concept of conspiracy and obstruction as in the case of *Walsby vs. Anley (1861) 3 E & E 516*.

The decisions making peaceful picketing illegal in these cases were reversed by the 1859 Molestation of workmen Act. The Act provided that no person would be deemed guilty of molestation or obstruction under the 1825 Act by reason merely of agreeing with others to fix wages or hours of work or by endeavoring to persuade others in a peaceful and reasonable manner to cease or to abstain from work for that purpose. However judges continued to use conspiracy, restraint of trade and threats and intimidation to outlaw picketing.

In 1871, the most significant Act the Trade Union Act was passed and particularly legalized Trade Unions and instituted a system of voluntary registration. Between 1871-1906, the status of trade unions and their involvement in Trade disputes was considerably improved. The major elements and principles of our Trade dispute law today were developed then and later imported into Uganda during the colonial period 1937-62. Several ordinances were passed i.e., 1937, 1939, 1943, and 1949 Trade dispute ordinance.

By 1962, the legality of Trade unions was already established and adopted labour disputes themselves.

However they are generally of two types, that is, individual and collective. It's the collective dispute that usually involve trade disputes. However many collective disputes may not involve unions either because the union does not exist in the work place or even where it exists may not be involved in a particular dispute.

LABOUR DISPUTES AND CONTRACT OF EMPLOYMENT

The basis of the employment relationship is the so called individual contract of employment which may be oral or written but the Employment Act insists on written particulars.

The written contract of employment in Uganda has several sources determining the terms and conditions thereof and there basically six sources in most contracts of employment, to include;

1. Common law

It imposes a duty to employer and employee

2. Written contract of employment

The written contract may have numerous provisions as agreed between workers and employers relating to wages, hours of work, annual leave, maternity leave, grounds of termination etc

1. The Staff regulations or staff manual or terms and conditions of services

These exist only in well organized and established companies or institutions. They provide detailed rules regarding the relationship between employee and employer including also the processes and mechanisms for resolving disputes at work either individual or collective. They are usually referred in the individual contract of employment

1. Recognition Agreement in work places where unions are recognized.

Any recognition agreement recognizes a union's right to represent its members in a work place. It stipulates matters for negotiation and also puts in place a dispute settlement procedure or so called disciplinary code.

2. Ordinary Collective Agreement (OCA) / Collective Bargaining Agreement (CBA)

Whereas a recognition agreement is usually signed once, the ordinary collective agreement is concluded periodically usually after a year or two. It contains elements dealing with collective disputes.

1. Statutory Provisions.

All labour laws are relevant in labour disputes whether the Employment Act, Labour Union Act, Workers Compensation Act, OSHA, and regulations made under them. However in terms of dispute resolution, it's mainly the Labour Disputes (Arbitration and Settlement) Act, 2006 which act also sets out a standing industrial court to deal with labour disputes, also the National Tripartite Charter on Labour Relations, 2013.

DISPUTE SETTLEMENT AND RIGHT TO STRIKE PROCESS.

A labour dispute under the Act means any dispute or difference between an employer or employers and an employee or employees, or a dispute between employees; or between labour unions, connected with employment or non employment, terms of employment, the condition of labour of any person or of the economic and social interests of a worker or workers.

In labour relations, the process of disputes takes various forms and has various steps. It is also different between the private and public sector.

The labour dispute process operates on a number of principles;-

- a) it operates on tripartite principles, that is involving workers, employers and the state
- b) it has special provisions for the management of labour disputes in essential services.

The Labour disputes (Arbitration and Settlement) Act 2006 establishes a number of methods of dispute settlement, that is,

- a) Labour officer /commissioner
- b) Work place process provisions through the collective agreement
- c) Conciliation
- d) Arbitration
- e) Board of inquiry

Labour Officer

A labour officer under the Act is a commissioner of labour, and a district labour officer as the case may be and includes an assistant labour officer. Under sec. 3 of the Act, a labour dispute could be reported whether existing or simply apprehended to the labour officer and the labour officer has a number of options to deal with it. However if the dispute is of a national disaster inflicting wide spread destruction and distress on the life, personal safety or health, of the whole or part of the population it can only be reported to the commissioner for labour.

The labour officer under sec 4 within two weeks from receipt of the report can meet with the parties and endeavour to conciliate and resolve the dispute, or appoint a conciliator to conciliate the parties in dispute and inform in writing of the appointment, or refer dispute back to the parties with comments and proposals to the parties of the terms upon which a settlement of a labour dispute may be negotiate or reject the report and inform the parties with reasons having regard to the insufficiency of particulars set out in the report or endeavours by the parties to reach a settlement, or any other matter the labour

officer considers to be relevant or can inform the parties to the dispute that the report comprises matters which cannot be dealt with under the Act.

The labour officer under sec. 5, shall after four weeks from receipt of the report at request of a party and upon failure to resolve the dispute refer it to the industrial court but where there are agreements for settlement by conciliation or arbitration in the trade or industry or between labour union, the labour officer shall ensure that the parties follow the procedures for settling the dispute laid out in the conciliation or arbitration agreement, which apply to the dispute.

A labour officer under sec. 24 shall in exercise of the powers under the Act endeavor to secure settlement of labour disputes, actual or eminent by use of voluntary procedures, conciliation and mediation. He or she may act as a mediator or conciliator or may appoint another person to act in that capacity.

The Industrial Court.

The industrial court was established under the Trade Disputes (Arbitration & Settlement) Act, 1964. The Court was established to settle unresolved disputes between employers and trade unions over terms and conditions of employment. At that time the Head of the Court was called the President.

Under the Labour disputes (Arbitration and Settlement) Act, 2006 the Court is established under section 7 as a standing court headed by High Court judge. It is supposed to be the main formal method of resolving labour disputes once work process and labour officer have failed. It is a specialized court in labour disputes. It is tripartite court and is constituted as follows;

- a) ***a chief judge and a judge***;- these are appointed by the president on the recommendation of the judicial service commission and should possess qualification similar to those of a high court judge and holds office for a term of five years.
- b) ***an independent member***;- is appointed by the minister of labour from a panel of five eminent Ugandans not representative of employers or employees and holds office for three years

- c) *a representative of employers*;- is appointed by the minister from a panel of five persons, nominated by the federation of employers to represent employers in respect of any one particular dispute referred to the Court
- d) *a representative of employees*;- is appointed by the minister from a panel of five persons, nominated by the federation of labour unions to represent employees in respect of any one particular dispute referred to the Court
- e) registrar of the industrial court and support staff-these are appointed by the public service commission as may be necessary. The registrar is a public officer with relevant knowledge in industrial relations and is the administrative head of the industrial court, under supervision of the Chief judge.

Functions of the Industrial Court

Section 8 provides for the functions of the industrial court to include-

- a) arbitrate labour disputes referred to it under the Act and,
- b) adjudicate upon questions of law and facts arising from references to the industrial court by any other law.

The procedures of the Court are governed by specific rules of the court. Under section 18 it is not bound by rules of evidence and may on its application require any person to provide in writing evidence in relation to any matter as it may require a person to attend before court and give evidence and a person to produce any document.

In any proceeding before the industrial court, under sec 20, either party may appear by a legal practitioner, and the sittings of the court may be in private or public at the discretion of the court.

Decisions of the Industrial Court / Awards.

Award is defined to mean an award made by the industrial court in exercise of its arbitral jurisdiction under section 14. Where the Industrial court is unable to reach a common decision, the matter is decided by a chief judge. An award of the industrial court must be announced by the Chief Judge in the presence of the parties to the dispute or their representatives under section 14. It takes effect from the date determined by the court but not earlier than the date the dispute arose and where the court hasn't fixed the date, the effective date shall be date which the award is announced and has power to

determine the period during which the award shall remain in force and binding on the concerned parties.

The registrar of the industrial court is bound under section 15 to submit to the minister a copy of every award of the industrial court and the award is enforceable in the same way as a decision in a civil matter in the High court and a party to the award who fails or refuses to abide by the terms of the award is in contempt of court.

Section 17 provides that where any question arises as to the interpretation of any award of the industrial court within 21 days from the effective date of the award or where new or relevant facts concerning the dispute materialize, a party to the award may apply to the industrial court to review its decision on a question of interpretation or in light of the new facts. The court may decide the matter after hearing the parties or without a hearing if the consent of the parties is obtained.

The decision of the Industrial court on a matter is final. However appeals to the Court of Appeals on a point of law or to determine whether the industrial court has jurisdiction over the matter. The court has been given powers to prosecute various offences. Individuals, labour unions and employers can lodge cases with the industrial court. The Court has power to hear cases as often as possible including circuiting in up country areas.

The industrial court contributes to the aims of social development sector by resolving labour disputes. When labour disputes are allowed to accumulate, worker's discontent remain latent and may at any time explode into violent strikes and lock outs. This kind of situation is not conducive for the economic growth and development of the country.

Strikes and lock out cause a decline in production and national income. This lowers the standard of living and leads to unemployment for the affected workers. Its presence contributes to industrial harmony and peace with consequent economic growth and improved standards of living.

Boards of Inquiry

Section 25 grants the minister of labour powers whenever he considers it expedient to appoint a board of inquiry into and report to him any matter affecting the relations between an employer and an employee, as he or she may direct, affecting the working conditions of an employee or group of employee or relating to the terms of employment of an employee. The board may comprise a single person or a number of person in which case the persons appointed shall equally be representative of employers and employees and shall not in any way be employed or concerned with the particular trade or industry into which that board is to inquire.

The board of inquiry shall at the end of inquiry submit to the minister a report of its findings and recommendations. Upon receipt the minister causes the report to be published and where it relates to existing disputes, make known to all or any of the parties concerned as he or she considers appropriate, the findings and recommendations contained in the report.

Under section 27, where after having known to the parties concerned the findings and recommendations contained in the report of the board of inquiry, the parties or any of them refuse to settle as recommended by the board within the time specified by the board, the minister may refer the dispute to the industrial court.

Collective Agreements

Collective agreement is defined under sec. 2 to mean a written agreement relating to the terms and conditions of employment concluded between one or more labour unions and one or more employers or between one or more labour unions and one or more employer's organizations.

Collective agreements are required to be registered under sec. 38 with the labour officer but unregistered collective agreement remains enforceable between the parties. The terms of the collective agreement registered under sec. 38 shall as far as appropriate be incorporated in the contracts of employment of the employees who are subject to the provisions, and shall give rise to legally enforceable rights.

The Right to Strike in Private Sector.

One of the most important elements in the labour dispute settlement process is the right to strike. The right to withdraw labour / strike is derived from Uganda's constitution as well as the other laws. Art. 40 gives all workers the right to withdraw labour collectively according to law. The law regarding the right to withdrawal labour is contained in the Labour Unions Act 2006 and Labour Dispute (Arbitration and Settlement) Act, 2006, and the Regulations 2012.

Secondly the right to strike is also regulated by the individual contract of employment. Thirdly is the collective bargaining, fourthly are the Staff regulations where they exist and ILO Conventions 87 and 98. In addition, the international covenant on economic, social and cultural rights recognizes the right to strike provided that it's exercised in conformity with the laws of a particular country

The ILO through its various bodies set international labour standards and also assesses the implementation of those standards, particularly through the governing body, general surveys, and opinions of the committee on freedom of association and the committee of expert through various reports. These opinions are persuasive and not directly enforceable in the courts of law.

With the respect to the right to strike, the ILO provides standards against which national laws may be analyzed or tested. The right to strike is not specifically stated or given in the ILO Convention or other ILO sources but both the committee on freedom of association and experts have interpreted relevant ILO conventions to give that right specifically Convention 87.

Industrial action means a strike or lockout.

A **strike** is defined under the Act to mean the cessation of work by a body of persons employed in any trade or industry, acting in combination or concerted refusal, or a refusal under a common understanding of any number of persons who are or have been employed, to continue to work or accept employment and includes any interruption or slow down of work by a number of persons employed in any trade or industry or undertaking, including any action commonly known as a 'sit-down strike' or a 'go slow'.

A **'lock-out'** means the closing of a place of employment, the suspension of work, or the refusal by an employer to continue to employ or re-engage any person employed by him or her in consequence of a

dispute, done with a view to compelling that person, or to aid another employer in compelling any person employed by that other employer to accept certain terms or conditions of employment which affects the employment.

General Provisions of the Right to Strike under the Act.

Section 28 provides that where it appears to a labour officer that there is a labour dispute (whether the dispute is reported to him or her or not) which is likely to lead to unlawful strike, lock out or *other industrial action*, the matter to which the labour dispute relates is settled by a collective agreement, a substantial portion of the employers and employees in trade or section of the industry covered by the collective agreement, are directly or through their organizations, parties to that collective agreement, and that the collective agreement has not expired, the labour officer may request the parties to the dispute to comply with the collective agreement, or order the parties to comply with the collective agreement and where the parties do not comply with the request or order of the labour officer, the minister or labour officer shall refer the dispute to the industrial court.

Where the minister or labour officer refers the dispute to the industrial court, the minister or labour officer may declare the counseling or procuring of any strike or other industrial action, or the introduction of a lock out, in relation to the matters forming the dispute referred to the industrial court to be unlawful until the earlier of the date not later than three weeks from the date on which the dispute was referred to the industrial court or the date the industrial court makes its decision or award.

Where a labour officer seeks to settle a labour dispute by conciliation, he or she may declare the counseling or procuring of a strike or other industrial action or the introduction of a strike or other industrial action or the introduction of a lock out, in relation to matters forming the subject matter of the conciliation efforts to be unlawful until earlier of the date; when the matter is settled by conciliation or by a decision by the industrial court or a date, not later than three weeks from the date on which the dispute was referred to conciliation.

A person who willfully induces a strike or other industrial action or who undertakes a lock out in circumstances where that action has been declared unlawful by the labour officer under the section commits an offence.

Important aspects under the section.

- there is a labour dispute likely to lead to a strike
- the dispute relates to a subsisting collective agreement
- labour officer requests or orders compliance with the collective agreement
- failure to comply with the request or order the minister or labour officer refers the matter to the industrial court.
- if the industrial court does not make an award after three weeks from the date of referral, the declaration of a strike will be lawful
- if the labour officer does not settle a labour dispute by conciliation after three weeks from the date of referral for conciliation, the declaration of a strike will be lawful

Section 29 provides that where the industrial court makes an award and the award has come into force, it shall be an offence during the existence of the award, to counsel or procure a strike or other industrial action or to introduce a lock out in circumstances where the objective or purpose of the strike, other industrial action or lock out is to upset or vary that award. Where a labour officer declares any industrial action unlawful under the Act, it shall be an offence for any person, during the period in which the industrial action has been declared unlawful, to counsel or procure a strike or other industrial action or to introduce a lock out.

Important aspects under the section.

- there cannot be a lawful strike /lock whose intention is to vary the award of the industrial court, the only remedy available to an aggrieved party is to appeal to the Court of Appeal.
- there cannot be a lawful strike /lock out when the labour officer has declared the same unlawful and referred the dispute to the industrial court / the dispute has been sought to be settled by conciliation.

Section 30 provides for employee's right to participate in an industrial action. It provides that subject to any limitation imposed by the Act or any other law, it shall be lawful for an employee to participate in an industrial action or to act in contemplation or furtherance of an industrial action in connection

with a labour dispute and that civil actions shall not be taken against an employee who participates or acts in contemplation or furtherance of an industrial action in connection with a labour dispute under the section.

Important aspects of the section.

- employees have right to strike provided they have followed the due process of the law
- a civil action against an employee in a lawful strike is bad in law

Picketing

Picket literally refers to a man placed, especially by a trade union, at the entrance to a factory, shop etc to prevent any one (esp. other workers) from going in until a quarrel with the employers is over.

Sec. 31 provides that for the purposes of peacefully persuading any person to work or to abstain from working or for the purpose of peacefully obtaining or communicating information, it shall be lawful, in contemplation or furtherance of a labour dispute for an employee to attend at or near his or her workplace or at the near business premises of the employer or associated employer from which his work is administered or an official of a labour union representing that employee to attend at or near their work places or at or near the business premises of their employers or associated employers from which such employees' work is administered.

Acts of intimidation or annoyance are however prohibited under sec. 32 of the Act. It is an offence for any person to compel or seek to compel another person to do or refrain from doing any act which that other person has a legal right to do or refrain from doing by use of violence or intimidation against that other person or his or her family or use of violence or threats of violence against the property of that person or his family.

Strikes in essential services

Provisions in essential services on the right to strike are more stringent. Essential services refers to services specified in schedule 2 of the Act and include; services of water, electricity, health, sanitary, hospital, fire, prisons, air traffic control, civil aviation, telecommunication, ambulances, transport services necessary for operation of any of the services specified in the schedule, central and local

government police services. The minister may with approval of the labour advisory board by statutory instrument amend schedule 2 of the Act.

Section 33 provides that an employee in an essential service shall not willfully breach or terminate his or her contract of service, other than in circumstances specified in section 34, or do so where he or she knows or has reasonable cause to believe that the probable consequences of his or her actions either alone or in combination with others, is to deprive the public or any section of the public of the essential service or substantially to diminish the enjoyment of that essential service by the public or by any section of the public. A person who contravenes the section commits an offence.

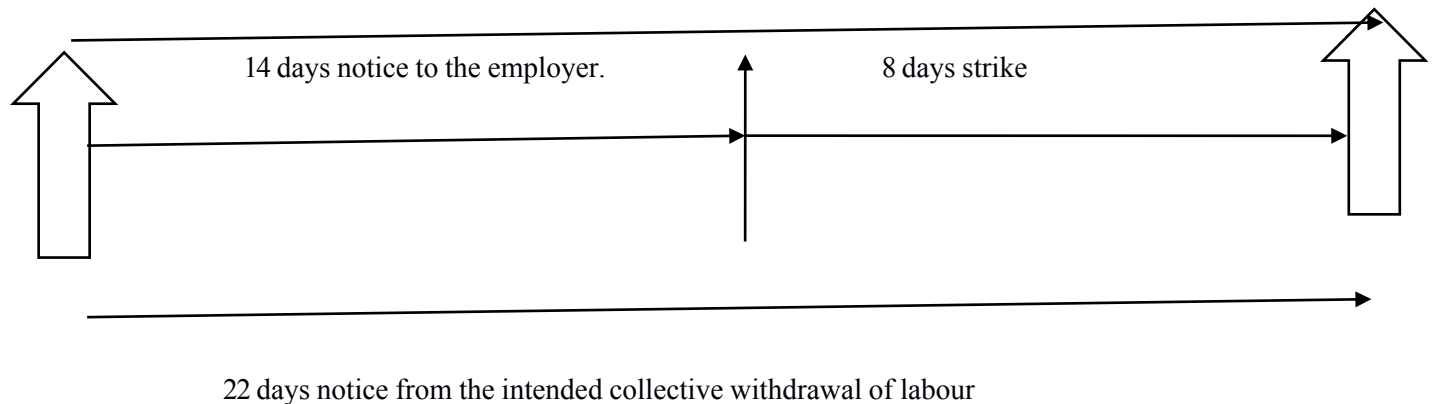
It is further prohibited subject to section 34, to cause or procure or counsel any employee to breach or terminate his or her contract of service and do so where he or she knows or has reasonable cause to believe that the probable consequences of his or her breach or termination, alone or with others, is to deprive the public or any section of the public of an essential service or substantially to diminish the enjoyment of an essential service by the public or any section of the public. A person who contravenes the section commits an offence.

Lawful industrial action in essential services

Section 34 provides for lawful industrial actions in essential services. It provides that where a collective withdrawal of labour from an essential service is contemplated, notice in writing of the intended participation in the withdrawal shall be given to an employer, not earlier than 14 days before the intended the intended collective withdrawal of labour, and not later than 22 days from the intended collective withdrawal of labour. Notice of withdraw of labour may be given individually by the employees in the essential service or collectively where they are represented by a labour union of which the employees are members.

Where notice of the intended participation in collective withdrawal given under the section is not subsequently withdrawn, an employee by whom or on whose behalf notice is given and who is represented by a labour union and a person who causes or procures or counsels that employee to breach his or her contract of service shall not be guilty of any offence where the employee breaches his or her contract of service after expiry of 14 days but before the expiry of 22 days following the delivery of the notice.

Illustration.



However a notice of intended participation in a collective withdrawal of labour shall not be valid under the section where before expiry of 14 days period the minister refers the dispute to the industrial court.

Under R. 18 of the labour disputes (Arbitration and Settlement) (Industrial Court Procedure) Rules, 2012 the court shall in the case of essential services inquire into and determine a reference expeditiously and shall declare its findings not later than twenty one days from the date of the commencement of the hearing. The court shall sit from day-today and may, for the purposes of hearing and determining the reference suspend any other matter pending before it; and sit during Sundays and on public holidays where it considers it necessary for ensuring compliance with 21 days.

Section 35 requires all employers in essential services to post printed copies of section 33 and 34 and schedule 2 in a conspicuous place to be read by employees and as often as the copy becomes defaced, obliterated, destroyed or removed; cause it to be replaced as soon as possible. Failure to do so is an offence.

The minister under sec. 36 may in consultation with the labour advisory board designate a service as an essential service if it is of such a nature that its interruption endangers the life, personal safety of the whole or part of the population. The industrial court may on reference by any party to a labour dispute or by a minister decide whether any service is within the classification of essential service specified in schedule 2 and the decision shall be conclusive.

Where a lock out or a strike occurs and the minister is satisfied that the parties acted in reasonable belief that the affected service is not an essential service but the industrial court declares that service to be an essential service, the minister shall cause a certificate to be served on the parties to the lock out or strike, stating that the service is an essential service and the lock out or strike shall be deemed to be a labour dispute to which sections 33 and 34 apply from the date on which the certificate is served on the parties.

All the above provisions however do not apply to employments in the public sector.

Labour Disputes in public sector

The Public Service (Negotiating, Consultative and Disputes Settlement Machinery) Act, 2008 provides for the establishment of a public service negotiating, consultative and dispute settlement machinery, provides for the creation of a consultative committee in each department or other unit or subdivision of government and each local government, offer conciliation services in labour disputes, establishes a National negotiating and consultative council to among other things, facilitate consultations, dialogue and negotiations between the government as employer and public service labour unions, establishes a public service tribunal to arbitrate labour disputes and secure harmonious labour relations in the public service.

Uganda's public sector labour relations consist of the government as employer and the labour unions that represent individual employee. The labour unions engage the government through the public service ministry in negotiating for workers interests and the advancement of the workers rights.

In 2011 the government recognized ten labour unions, and these included, the National Union of Education Institutions, Uganda Government and Allied Worker's Union, Uganda Scientists, Researchers And Allied Workers Union, Uganda National Teachers' Union, Uganda Nurses and Midwives Union, Uganda Local Government Workers' Union, Uganda Medical Worker's Union, University, Professional and Academic Staff Union, Uganda Pastoral, Statutory Authority and Judicial Workers Union, Uganda Farm and Agro Based Workers Union. These Unions are involved in negotiations and consultations with the government on behalf of employees for favourable terms and

conditions of service, and in instances of any dispute with the employer, the labour union provide representation for the employees through all the dispute resolution procedures.

The Act defines Public officer and Public service that they have the meaning assigned by article 257 of the Constitution.

The Constitution under Art. 175 defines a public officer to mean any person holding or acting in an office in the public service. Public service means service in any civil capacity of the Government the emoluments for which are payable directly from the Consolidated Fund or directly out of monies provided by Parliament.

The Constitution under Art. 257 define Public office to mean an office in the public service. Public officer means a person holding or acting in any public office. Public service means service in a civil capacity of the Government or of a local government.

Consultative Committees-Sec. 3 of the Act.

There is an establishment in each autonomous body, ministry, department, local government or such division or unit of the public service as may be prescribed by the Minister by statutory instrument, a Consultative Committee consisting of a Chairperson and not less than ten other members. Every Consultative Committee shall consist of five persons representing an autonomous body, ministry, department, division, or unit of the public service, as the case may be, and five union representatives.

Autonomous body” means a government agency, authority, commission or institution, which is part of the public service but which, by virtues of the law establishing it or under which it is established has other control of its own affairs or is otherwise independent-Sec.1

Department” means a department of a ministry, local authority or local government-sec. 1

Sec. 2 of the Public Service Act defines a department to mean an area of government for which an officer responsible reports directly to the president or to the parliament of Uganda, like the Audit General's Department, Uganda Police Force, Uganda Prison services etc.

The Consultative Committee hear and offers conciliation services in labour disputes in any autonomous body, ministry, department, local government, division or unit of the public service; act as a forum for involving public officers and other employees in the public service in policy issues that affect them. The rules and procedures which govern a Consultative Committee are as set out in the Second Schedule to the Act.

Under the Second Schedule to the Act, where a public officer or other employee of the public service has a grievance or a complaint against any other public officer or other employee of the public service, the aggrieved party shall first report the grievance or complaint to his or her immediate supervisor or manager; and failing any action by the supervisor or manager, report the grievance to his or her Union Representative who will prepare a memorandum setting out the grievance or complaint and submit it to the Secretary of the relevant Consultative Committee with a copy to the other party affected by the grievance or complaint; and the Secretary to the Committee shall register the grievance or complaint, notify the other party to the grievance, the Chairperson and other members of the Committee about the grievance by furnishing each of them with a copy of the grievance or complaint.

In consultation with the Chairperson, the secretary will set a date for the hearing of the grievance or complaint, which shall not be earlier than fourteen working days after the notification, and circulate the hearing date to the other party to the grievance and other members of the Committee; and call upon the other party to the grievance or complaint to prepare and submit the reply to the Secretary not later than four working days before the hearing date, a reply to grievance or complaint.

In the event of an impasse, a labour dispute shall be declared and reported to the Public Service Negotiating and Consultative Council.

The Public Service Negotiating and Consultative Council-Sec. 4 of the Act.

There is established a Public Service Negotiating and Consultative Council consisting of a Chairperson and not less than five other members. The Chairperson and other members of the

Council shall be appointed by the Minister of public service on terms and conditions of service determined by the Minister in consultation with the Minister responsible for finance whose expenses shall be charged on the Consolidated Fund.

The Council conducts and facilitates consultations, dialogue and negotiations between the Government, an autonomous body or a local government as the employer and the Public Service Labour Union, on the terms and conditions of service of members of the union, acts as a forum for discussions, consultations and negotiations on issues specified in the Recognition Agreement set out in the Third Schedule to the Act and acts as a forum for involving public officers and other employees in the public service in the process of formulating policy in the public service.

During any negotiation or consultation, the persons representing the Government shall be led by the Head of the Public Service and shall be composed of representatives of the Ministries responsible for the public service, finance, justice, local governments and such other Ministries as the Minister may determine. The public service labour unions shall form a joint negotiating team consisting of at least two members from each public service labour union, to negotiate on issues of common interest; but individual labour unions may negotiate on matters peculiar to them. The Ministry responsible for the public service shall be the secretariat to the Council while the Ministry responsible for labour shall provide technical advisory services to the Council.

The rules which shall govern the negotiation of terms and conditions of service in the public service are as set out in the Fourth Schedule to the Act. According to the schedule, Negotiations on remunerative items shall be made by a Collective Bargaining Agreement (CBA) which shall form part of the terms and conditions of service in the public service. The centralized Collective Bargaining Agreement on salaries in the public service shall apply to local governments. The provisions relating to negotiable items in a Collective Bargaining Agreement (CBA) shall only be varied by agreement of both parties; and any proposal by a party to vary any such provision shall be notified to the other party in writing within three (3) months after formulating the proposal. In negotiating matters that have implications on monetary expenditure, parties shall conclude their negotiations during the budgetary phase in each financial year

The rules and procedures which shall govern the handling of grievances in the public service are set out in the Fifth Schedule to the Act. According to the schedule, the party with a grievance shall submit a written memorandum of the grievance to the Secretary to the Council with a copy to the other party. The Secretary to the Council shall register the grievance, notify the other party to the grievance, the Chairperson and all other members of the Council about the grievance by furnishing a copy of the memorandum of the grievance to each of them; and in consultation with the Chairperson, set a date for the hearing of the grievance, which shall not be earlier than fourteen working days after the date on which copies of the memorandum of the grievance are circulated to the other party to the grievance and the other members of the Council.

The Secretary shall request the other party to the grievance to prepare and submit to the Secretary, a reply to the grievance not later than four (4) working days before the date for hearing the grievance. The hearing of a grievance shall be completed within sixty working days from the date of registration of the grievance. During the hearing of a grievance, the parties to the grievance shall negotiate in good faith, not victimise or intimidate one another, avoid taking to the press matters in dispute, exercise patience and restraint; and show mutual respect and trust.

A memorandum of agreement shall be signed after both parties have reached a consensus. In case of a dead-lock, a report of the dispute which forms the basis of the grievance shall be sent by the Chairperson of the Council to the Minister within two (2) working days, requesting the Minister to refer the matter to the Tribunal. The Minister may, within five (5) working days, refer the matter back to the Council with guidelines regarding how, and a time frame within which, the grievance may be resolved, or refer the matter to the Tribunal.

Public Service Tribunal Sec. 5 of the Act.

There is established a Public Service Tribunal consisting of a Chairperson, a Vice Chairperson and not less than four or more than six other members, half of whom shall be nominated by the public service labour union and appointed by the Minister, with the approval of the Cabinet.

The Tribunal hears and arbitrates, in accordance with the provisions of the Act, any labour dispute referred to it by the Minister, make awards or recommendations to the Government

on labour disputes referred to it, and secures harmonious labour relations in the public service. The awards of the Tribunal shall be binding on both parties to the labour dispute.

General Provisions of the Right to Strike under the Act-Sec 8 of the Act

Workers in the public service have a right to withdraw labour or call a strike in furtherance of a labour dispute, provided the negotiating machinery is exhausted, according to section 7 (2) (b). This subsection does not apply to a lockout or a strike arising out of a labour dispute where any machinery or arrangement under the Act or otherwise for the settlement, by conciliation or arbitration, of the dispute has been resorted to and exhausted, withdrawal of labour is due to unsafe and dangerous working environment.

Prior to a strike advance notice shall be given in accordance with section 7 (2), or any other written law, the parties shall exhaust all avenues for conciliation, arbitration or dispute settlement provided for under the Act

Strikes in Public service essential services-Sec 7

Essential services” means services, which if withdrawn abruptly may cause loss of life, threaten the well-being of society, cause major disruption in the nation, cause disaster.

Essential services are as specified in the Sixth Schedule to the Act. These include;-Fire services, Meteorological services, Education services, Uganda computer services, Health, sanitary facilities and hospitals, Transport services necessary for the operation of the services set out in the Schedule, Water and electricity, Air traffic services, Telecommunications

Where collective withdrawal of labour from any essential services is contemplated in furtherance of a labour dispute, notice of a strike shall not be valid unless it is accompanied by a certificate signed by the Chairperson of the Council stating that ninety days have elapsed since the date of the report of the labour dispute to the Council; and the disputes settlement machinery has been exhausted. Labour disputes in essential services shall be dealt with expeditiously.

SESSION IX

SOCIAL SECURITY AND PENSIONS

Social Security as a concept is not limited to the provisions of the NSSF Act and the Pension Act. All societies attempt to provide social security for all classes and social groups. Social security refers to a formal system or arrangement concerned with protection against socially recognized conditions, including poverty, old age, disability, unemployment, sickness, orphanage and others. The most comprehensive attempt to conceptualize social security is the International Labour Organization (ILO) Convention No. 120, that is, ILO Social Security (Minimum Standards) Convention 1952 that provides for the right to security regarding;

- a) Old age
- b) Health care
- c) Sickness benefits
- d) Unemployment benefits
- e) Employment-related injury benefits (worker's compensation)
- f) Family and child support
- g) Disability benefit (general)
- h) Survivors and orphans, and
- i) Maternity benefits, including; prenatal, childbirth and post natal care and hospital care, where necessary.

However our concern here is a limited fraction of social security namely lump sum payment under the NSSF Act and the pension and gratuities under the Pension Act for those workers in the formal employment.

Social security in Uganda therefore for the formal employment persons is very limited and covered under the NSSF Act and the Pension Act for the private and public service respectively.

Incidentally, as of 2007, Uganda's working population was estimated at 11 million people. Out of these, the Public Service Pension Scheme (PSPS) covers only 2.8% while the NSSF covers only 2.3%. In short, both the PSPS and NSSF covers only 5.1% of the entire working population. About 95% of the Uganda's population is, therefore, not covered by the formal social security schemes. This is so even when one takes into account the private arrangements outside the NSSF scheme. Even if one stretched the coverage to include these private schemes, formal social security cannot be beyond 7% of the Population.

The NSSF.

The NSSF was created in 1960s as a government department in the ministry of labour covering the private sector until 1985 when the NSSF Act No.5/1985 was passed. It repealed the Social Security Act No. 21/1967 and established an autonomous corporation from government.

Eligible Employee

Section 6 provides that any employee of or above the age of sixteen and below the age of fifty-five years except (a) an employee employed in excepted employment; (b) a nonresident employee, (c) an employee not employed in Uganda, who is declared by the Minister to be such employee and any farmer or artisan who is a member of a cooperative society shall, for the purposes of this Act, be deemed to be an eligible employee.

Sec. 7 provides for compulsory registration of employers and eligible employees. The Minister by statutory order has powers to specify any class or description of eligible employees as persons who shall be registered as members of the fund; and specify any class or description of employers as persons who shall be registered as contributing employers.

Under Statutory Instrument 222-INSSF (Registration of Employers and Employees) order, the minister declared that all eligible employees whether wholly or partly employed in Uganda, who are in the employment of employers with five or more employees, are specified as persons who shall register as members of the Social Security Fund. Further that employers with five or more employees are specified as persons who shall register as contributing employers.

Under section 7(4&5) a registered employee shall produce evidence of his or her registration and membership to his or her employer, and, if he or she changes his or her name, give all such particulars to the fund. An employer shall, whenever applying for a business license, be required to produce a clearance certificate of up-to-date payments of due contributions issued by the managing director. A business license includes a practicing certificate for any profession. Lawyers are required to produce a certificate showing that either they have paid or are exempted.

Under section 8, any employment specified in the First Schedule to the Act is an excepted employment from membership and payment of NSSF dues and the Minister may, by statutory instrument, amend the First Schedule. Excepted employment include Persons entitled to exemption from contribution to social security schemes under any international convention to which Uganda is a member, Employment by a university or college by virtue of which the employee is entitled to receive benefits under any superannuation scheme approved by the Minister in writing, Employment as a member of the Uganda Police Force, Uganda Prisons Service, Uganda Peoples' Defence Forces, employment by virtue of which employees are eligible for pension benefits under the Pensions Act, employment by virtue of which employees in the public service, local authority, any corporation or body established for public purposes are eligible for pensions under any statutory or non statutory scheme approved by the Minister, any employment referred to under probationary service conditions etc

Under Section 9 any person registered as a contributing employer who ceases to employ an eligible employee; or throughout the two years immediately preceding his or her application under the section has employed less than the minimum number of employees required under this Act for compulsory registration, may apply to the managing director, in the form approved by the Minister, for the

cancellation of his or her registration; and the managing director shall, if he or she is satisfied with the information contained in the application, cancel the registration.

Section 10 provides for voluntary registration by an employer even if his workers are less than 5. For the purpose of voluntary registration, an, “employee” includes a minister of religion; “employer” includes any person or body of persons or corporation from whom the minister of religion receives his or her stipend / salary; “minister of religion” includes any clerk in holy orders, pastor, missionary, kahdi, immam, sheikh or other person acting in any similar capacity who is engaged in ministering to the spiritual needs of others.

Required Standard Contribution by Employers.

Under section 11, on and after the appointed day, every contributing employer shall, for every month during which he or she pays wages to an eligible employee, pay to the fund, within fifteen days next following the last day of the month for which the relevant wages are paid, a standard contribution of 15 percent calculated on the total wages paid during that month to that employee. “wages” means all emoluments which would be payable in cash to an employee under his or her contract of service if no deductions were made, whether in pursuance of any law requiring or permitting any deduction or otherwise.

NSSF dues are paid on the gross emoluments before any tax or deductions are allowable i.e union dues, advances and any other allowable deductions.

If an eligible employee is employed successively or concurrently by two or more employers, each of such employers shall pay to the fund in respect of such employee a contribution corresponding to the wages he or she pays such eligible employee.

Under section 12 a contributing employer may deduct from the monthly wage payment of his or her employee the employee’s share of a standard contribution of 5 percent calculated on the total wages paid during that month to that employee, but if more than one wage payment is made during any

month, the employer may provisionally deduct from all but the last wage payment part of the employee's share of a standard contribution.

Benefits

Section 19 makes the following descriptions of benefits-

- (a) age benefit upon attaining 55 yrs and retired from regular employment or attained 55 yrs.
- (b) withdrawal benefit upon attaining 50 yrs and unemployed for atleast 1 year.
- (c) invalidity benefit in case an employee is sick and unable to work
- (d) emigration grant when permanently leaving Uganda
- (e) survivor's benefit in case of death in which case the next of kin is paid

Exempted Employment in case of move to exempted employment e.g government

In the case of **National Social Security Fund vs. Kisubi High School Ltd** HCCS No. 440 of 2011 (Commercial Division) Justice Madrama considered the provisions of the NSSF Act and held that the defendant was a contributing employer as defined by section 1 (f) of the Act Cap. 222. Secondly that were there was a delay in the payment of contribution, section 14 of the Act prescribes a penalty of 10% of the amount of contribution which can be remitted in whole or part by the Managing director of NSSF. That interest on the contributors account is imposed by statute under section 35 of the Act. The Court entered judgment in favour of NSSF for arrears of monthly contributions, statutory penalties under section 14, statutory interest at rates declared by the minister, further penalties under section 14 of the Act at a statutory rate from 30th March 2012 to date of payment in full, interest at the rate declared by the minister from 30th March 2012 to date of payment in full and costs of the suit.

PENSIONS

Pension refers to an arrangement whereby regular periodic payments (usually monthly), like a wage or salary are made to an aged (old) member for some defined period or to dependants upon the member's death.

Pensions are for public service. The Pensions Act Cap 286 is the major statutory source for providing for the grant and regulation of pension, gratuities and other allowances in respect of public officers / employees of the government.

Section 21 of the Act makes provision for the application of the Act and it applies to officers in the government service after the 9th August, 1948, otherwise than on transfer from other public service;

(b) to every teacher appointed to the Teaching Service on or after the 1st day of July, 1953;

(c) to every officer in the service of the administration of a district, and to every such officer who was in the service—

(i) in the case of service in the former Buganda Government, on or after the 1st day of January, 1954;

(ii) in the case of service in the former Eastern, Western or Northern Province, on or after the 1st day of January, 1950;

(d) to an officer serving in an urban authority who is a member of a pension scheme established by the urban authority in which he or she is serving who, from the date the pensions authority may determine, opts to be subject to this Act;

(e) to every officer appointed to the service of an urban authority on or after the date the pensions authority may determine;

(f) subject to the Second Schedule to this Act, to every officer (i) transferred to the service of the Government after the 9th August, 1948, from other public service; (ii) in the service of the Government prior to the 9th August, 1948, who, in accordance with the Government Secretariat Circular No. 29 of 1948, of the 1st September, 1948, elected or is deemed to have elected for the new terms of service contained in that circular and any amendments to it; (iii) transferred from the service of the Government to other public service before the 1st January, 1946, who retires from the public service subsequent to that date;

(g) to every officer to whom Government Secretariat Circular No. 53 of 1948, of the 21st December, 1948, and any amendments and additions to it, applies;

(h) to every officer to whom Government Secretariat Circular Standing Instruction No. 83 of the 25th October, 1954, and any amendments and additions to it, applies.

It should be noted that a number of officers otherwise in the public service are excluded or not included in the application of the Act. These include Army, police and Prisons. For instance armed forces pension Act Cap 295 and SI 298-3 applied to army officers who would be granted pension only due to sickness, disability and death on approval by the Pension's service board. Equally organizations such as ISO and ESO are excluded. On the other hand the Police Act Cap 303 sec 62 makes provisions for police authority to establish schemes for the grant of pension, gratuities and other pensions in respect of officers appointed under the Act.

However under the government standing orders chapter 1 L-A police and prison officers below the rank of assistant inspector or principal inspector Grade II become eligible for pension after completing 12yrs of service but after 45 yrs of age or more but they must transfer to a pensionable establishment otherwise they remain on gratuity terms.

Services with scheduled government in the 1st schedule to the pension regulations, EADB, URC and UPTC were recognized as services as pensionable. They were also other public services. Others included MUK, statutory corporations, districty and urban authorities, the UN or its agencies, W.B, and A.D.B whose service is approved by the pension authority.

Under section 9, every officer employed in the public service who has qualified for a pension is entitled to it, i.e., it is a right. However subsection 2, no proceedings can be brought in any court on the ground that the provision of the Act have not been complied with.

Cf. Art. 254 constitution provides that a public officer shall on retirement receive such pension as is consummate with his or her rank, salary and length of service.

In the case of **Henry Munyangaizi vs. A.G.**, the H.C declined to enforce provision of section 9(2) prohibiting court proceedings.

Otherwise section 22 provides for an appeal board to deal with denial of pension, gratuity or other allowance under the Act or withholding, reduction or suspension of pension, gratuity or other allowances under the Act. The appeals board is adhoc and has 3 members appointed by the minister.

The appeal board advises the pensions authority and when the decision of the pension authority is being appeal the board confirms, reverses or modifies the decision and the pensions authority must act in accordance with the decision of the board.

As a result of changes in local government administration, section 61 of the Local Government Act Cap 243 empowers local government to establish terms and conditions of service for local government staff including urban authorities.

What is the Source of Pension?

Sec 7 provides that all pension gratuities and allowances under the Act are payable from the consolidated fund

Pension, gratuities and allowances of district and urban authority employees are to be charged on and payable under the funds of the district and urban authority from their sources.

Section 8 provides that no income tax is chargeable on any pension, gratuity or allowances under the Act.

Who is pensionable or how do you qualify for pension

S.10 the following are the qualifications;

- a) 45 yrs of age and having worked for 10yrs and above
- b) On abolition of the employee's office or
- c) On Compulsory retirement for the purpose of facilitating improvement in the organization of the department to which the officer belongs by which greater efficacy of the economy may be effected
- d) On medical evidence that the officer cannot work satisfactorily due to any infirmity of mind or body i.e, cant work for medical reasons, or
- e) Retirement with the consent of the president acting on the advise of the public, judicial or education service commission
- f) Gratuity to a female officer 'who resigns on or with a view to marriage or is required to retire on account of her marriage''
- g) On voluntary retirement but on the attainment of the age of 45yrs and having served for a continuous period of 10 yrs or more
- h) Retirement in public interest under s.11
- i) Compulsory retirement at the age of 60 yrs under sec. 12

Note, one can get pension before 45yrs under reorganization and improvement of organization, death, marriage for female officers, on medical evidence, on abolition of office. If you retire before 45yrs you do not get pension but gratuity.

Sec. 15 pension may be granted on dismissal from public service at the discretion of the pension authority.

S. 17 pension and gratuity are not attachable

S.18 pension and allowances cease on death but where a pensioner dies, before expiry of 15yrs after his retirement, the pension authority may continue paying his pension or allowances for unexpired period. Usually they pay to children or spouse. There are three scenarios

- i) to the spouse if survived for the unexpired period
- ii). If not survived by spouse to children under 18yrs
- iii) if spouse dies then children for under 18 yrs for unexpired period.

In addition to the Public Service Pension Scheme (PSPS), members and staff of parliament are now provided with pension and gratuity under the Parliamentary Pensions Act 2007 (No.6/2007). The scheme covers all members of parliament whether elected or ex-officio except the Prime minister and Vice president. Contributions by members of parliament is 15% of their Pensionable emoluments while government contributes 30% monthly.

Apart from the above elements of the PSPS there are a number of other laws covering other public servants namely; local government staff, police and prison officers, judges, magistrates, intelligence officers and some public bodies, authorities and enterprises. Their social security arrangements vary and are subject to decisions of boards of public bodies.

For the judges of the High Court, Justices of the Court of Appeal and Supreme Court provision was made in 1996 under the Judicature Act (s. 46(3) Cap. 13) to the effect that once they are appointed on pensionable terms they are eligible 'for pension on completion of one year of service or in accordance with the Pension Act, whichever is sooner'

For the Local Government, Local Government Act provides that the terms and conditions of service of the local government staff shall conform with those prescribed by the Public service Commission for the Public service generally.

For the UPDF, the UPDF Act makes provision for pensions and gratuities for both officers and militants (non officers).

For the Police officers, the Police Act establishes a police authority which is empowered to make provisions for the establishment of schemes for the grant of pensions, gratuities and other benefits in respect of officers appointed on permanent or temporary terms.

The Security Organizations (Terms and Conditions of Service) Regulations made under the Security Organizations Act (Cap 305) provides for compensation for employees of intelligence organizations for injury during the normal course of duties. On retirement however there is no pension but ex gratia payment.

Every Commission, Authority or Public enterprise (the few that were not privatized or that were created in the last two decades) such as the Electoral Commission, Uganda Human Rights Commission, Public Service Commission, Electricity Regulatory Authority, Uganda Revenue Authority, Bank of Uganda or Uganda Investments Authority there are regulations and terms and conditions specific to that Authority, Commission or Public enterprise.

For instance the Bank of Uganda Act (Cap 51) provides that Board members not being employees of the Bank may be paid remuneration or allowances as the Board may in consultation with the minister determine and the Board itself is empowered to make byelaws to regulate conditions of service of

Board members while for the staff they are engaged 'on terms and conditions that shall be laid down by the Board'.

Private Social Protection Schemes

There are a number of Private non statutory social protection schemes managed by insurers and some large companies. These include private pension schemes, health insurance, and education insurance. Among the existing schemes are those at Makerere University-Makerere University Staff Retirement Benefits Schemes, British American Tobacco Staff Pension Scheme, Stanbic Bank Staff Pension Fund and Bank of Uganda Staff Pension Scheme. These schemes are unregulated. More interestingly the schemes usually operate side by side with the statutory NSSF arrangements.

Reforms to the Social security and Pension Sector in Uganda.

The reform of the retirement benefits sector (pension sector) started in 2002. In 2003, stakeholders were consulted on the reforms of social protection including the pension sector, and an STG Report was prepared. The report recommended the establishment of a regulatory framework for the pension sector and liberalization, among others.

Whereas attempts have been made to reform the sector since 2002, the process has not been successful due to stop-go approach to reform and other political economy issues. However since 2008 to date, some important milestones have been achieved. These include, a clear decision by the cabinet to advance the reform as a 2 step process, first putting in place an effective regulatory framework, and secondly liberalizing the sector to create competitive pressure in order to improve governance of pension funds.

i) The Uganda Retirement Benefits Authority Act 2011

The 8th Parliament in May 2011 enacted the legislation, the Uganda Retirements Benefits Regulatory Authority (URBRA) Act 2011. This legislation was assented to by the President in June 2011 and became effective on the 26th September 2011, the date the Act was gazetted.

The Act establishes an independent regulatory authority, *the Uganda Retirement Regulatory Authority*, which is responsible for regulating the establishment and operation of the retirement benefit scheme in Uganda in both the private and Public sector, protection of funds of retirement benefits schemes, supervising institutions that provide retirement benefit products and services and ensuring the stability of the financial sector through promoting the stability of the retirement benefits sector as a whole with a view of promoting long term capital development.

It is hoped that the authority will help promote transparency, accountability and ensure the integrity of retirement benefits schemes and the retirement benefits sector as a whole and also protect the interests of members and beneficiaries of these schemes while preventing contingent fiscal liabilities incurred by the government. The Act also provides for licensing of custodians, trustees, administrators and fund managers.

ii) The Retirement Benefits Sector liberalization Bill, 2011

About March 2011, the Ministry of Finance, Planning and Economic Development (MOFPED) drafted a bill which is currently under discussion entitled the Liberalization of the Retirement Sector Bill 2011.

The draft Bill aims at liberalizing ‘the retirement benefit sector’, to remove monopoly over mandatory contributions, to provide for fair competition among licensed retirement benefits schemes, to provide for mandatory contribution and benefits, to provide for voluntary contributions and voluntary schemes, to regulate occupational retirement schemes, to provide for licensing of umbrella retirement benefits schemes, to provide for the portability and transfer of accrued benefits, to provide for innovation of new retirement products and services, to consolidate and reform the law relating to retirement benefits, to convert the public service pension scheme into a contributory scheme, to repeal the National Social Security Fund Act Cap 222 and for related matters.

iii) The (Draft) National Health Insurance Bill, 2010

The Ministry of Health in Uganda Drafted the Bill intended to cover about 2 million Ugandans in the formal sector expected to be funded by 4% employer's contribution and 4% of each employee's gross monthly salary. The rest of Ugandans are also supposed to be covered either under community insurance schemes (mainly for rural areas and informal) sector or private commercial health insurance schemes. The Draft Bill proposes to establish the National Health insurance system with three schemes. a) The social health insurance scheme, b) Community health insurance scheme c) Private Commercial Health insurance scheme.

It is proposed that every resident in Uganda shall compulsorily be registered with one of the above schemes. It is further proposed that a board of directors be established to administer the schemes. The Bill also proposes the kinds of benefits that members should enjoy.