

EMPLOYERS GUIDE

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INTRODUCTION

It is always important for both local and foreign investors to have the knowledge of the local labour laws so that they do not end up in conflict with authorities and their employees. The Zambian Government understands that the most important resource in any given company is human capital and hence the need for employers to always maintain a sound relationship with their employees so has to enhance their productivity needed for the growth of the economy. On the other hand, the human capital also has obligations to fulfill in order to satisfy the needs of the employer. Therefore, in order to regulate the relationship between the two parties (employer and employee) the Government has put up labour laws. The following topics all relate to labour issues and they will assist in resolving the day to day encounters that the employer comes into contact with.

BRIEF INTRODUCTION ABOUT LABOUR LAWS

- (i) **Laws are needed to provide social ordering for the common good.**

Labour laws are needed to provide groundwork for employer/ employee relation, in order:

- To create/ maintain Industrial harmony
- Prevent exploitation, discrimination, intimidation etc.
- To counter negative effect of market mechanism- the imperfect labour market.
- To comply with international labour standards.

Employment relation between employer/employee is regulated by:-

- Labour Laws
 - Employment contract
 - Company's regulations
 - Union agreement if any
- (ii) **The International Labour Organization (ILO)**

The founding principle of ILO is that **“universal and lasting peace can be established only if it is based on social justice”**

Therefore, the ILO set its methods and principles which were considered to be of **‘special and urgent importance’** for attainment of universal and lasting peace which are reflected in the Preamble to its Constitution and includes:-

the regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principles of equal remuneration for work of equal value, recognition of the principle of freedom of association, the organization of vocational and technical education and other measures.

(iii) **The International Labour Standards**

The ILO has always accorded a very high priority to the setting and supervision of international labour standards. They are embodied in Conventions or Recommendations.

They deal with a wide range of issues including: basic working conditions; minimum wages; the working conditions of certain categories of workers (for example, children, young persons or women); social security; labour administration; industrial relations; employment policy; occupational health and safety; and the special occupational groups.

Consistent with the ILO’s concern with fundamental human rights, they also deal with freedom of association, abolition of forced labour and elimination of discrimination in employment.

CONTROVERSIAL ISSUES

(i) **What is wage, what is not.** Wage is confined to money only paid by employer to employee in return to work. Compensation in kind can no longer be counted as wage. Money payment such as the cost of living allowance is wage. Service charge paid in the hotel and restaurant industry can be or cannot be counted as a part of wage depending on the arrangement.

(ii) **Work days, work hours, and recess**

Set standard for work hours at the maximum of 8 hours per day. Work hours shall not exceed 48 hours per week, **except in certain work which may be dangerous or hazardous to health the limit is set at 7 per day or 42 hours per week.**

(iii) **Overtime work, and overtime payment.**

- **Rights for overtime work.** Employers may order their employees to work overtime, or during days off if necessary, or if cessation of work may be damaging. Under normal circumstances, assignment of overtime duties must be made in advance, and the employees have the right to refuse overtime duties.

- **Eligibility for overtime.** It is the management's uncontested right to choose who should be given overtime duties.

- **What type of staff not eligible for over time payment?** The following types of staff are ineligible for overtime rate of pay:

(i) Employees with the authorities to hire, to reward, to reduce (ii) wage, or to terminate other employees.

(iv) Employees responsible for fire control and public disaster.

Employees whose work requires them to work outside the work place without a predetermined closing hour.

Employees assigned to guard place or property on regular basis

1.0. ACQUISITION, TAKEOVER, MERGER: WHAT HAPPENS TO EMPLOYMENT CONDITIONS?

- (i) In the case of a change of employer because of inheritance, takeover or any other reason or in the case where the employer is a juristic person and, there is an amendment in the registration, transfer, or merges with other juristic person, all rights belonging to the employee with the previous employer shall remain intact.

The new employer shall be liable for all the rights and duties pertaining to such employee. (Though currently not provided for in the Employment Act Cap 268 of the laws of Zambia but a labour market practice).

(ii) Deduction of wage

The Law forbids wage deduction except for personal income tax, or other purposes stated by law (social security, union dues, debt repayment to savings & loans cooperative, or welfare loan; or to compensate for damage, with employee's consent).

Labour Officers object to wage deduction stated as a part of disciplinary action in many company's regulation

EMPLOYEES LAWFUL RIGHT TO DISOBEY'S EMPLOYER'S ORDERS

To minimize disputes and staff problems, the management should review the employment policies and procedures. The authorization approach firmly holds on the concept of "The Boss is Always Right", the century old heritage from the industrial revolution era.

Employer's disciplinary obligations as stated in company's employment regulations and employment contract to obey superiors orders are continually questioned and challenged at the work places as well as in the court of law. Oftentimes, employees won.

The court ruled time and again that such orders to be complied must be lawful. The employer may punish employees if the latter disobeys lawful and just orders.

What is a lawful order?

The order must be related to the job a person is employed to perform, and not an infringement of any individual's natural, and lawful rights. For example, employees may object to work outside certain areas, or for people other than the employer as specified in the contract, or for other duties not covered in the job description.

Employer may refuse to stay on after hours to work overtime, or refuse to come to work on his/her day off despite the extra pay. Such refusal could be costly or damaging to employers who have to meet purchasing orders. Trade unions use "**Overtime Ban**" as effective bargaining power.

What are orders which infringe upon employee's individual rights?

They are orders for body search, house or car search, confinement to certain area unrelated to the performance of duties, pregnancy test, drug test, etc.

But if explanation is clearly given as to the reasons to carry out such activities, most employees would gladly comply. The important thing is that employer may not punish them for every non compliance. There are ways to persuade, as well as to pressure employees to comply to such exceptional orders.

What about the search of employee's lockers, drawers, dormitories, etc which are company's properties made available for employee's use? Employers have the right to search them but in the presence of the employees responsible. This is similar to checking email, internet that are available for work. Employers hold property right to the assets.

Employers may inspect employee's email or internet communication on the ground of the right of ownership of the computer. But the employees may insist on their privacy, and confidentiality.

Job transfer order is another issue. If it is not done in good faith, i.e. moving him/her to inferior position (demotion), to a job he does not have applicable knowledge or skills, or to places where he/she will face hardship or danger, employee may have valid reason to resist or refuse. The employer's right to manage may not hold. It may be termed as unfair practice, or a constructive termination, i.e. providing an exit to unwanted staff.

What unusual actions may employees take against employers?

1. Employer may forbid employees from entering their work places, as long as wage continue to be paid on fixed date.
2. Employer may read out warning letter and have witness to sign it when the wrongdoers refuse to acknowledge their faults.
3. Employers may restrict employee's right to work somewhere else in some occupation for a few years afterwards i.e. non competitive employments agreement, or to forbid the disclosure of confidential information.

VARIOUS COMPENSATION PAYABLE TO EMPLOYEES

Employees are entitled to many types of payments from employers.

We present here 3 types of payment due to employees' i.e.

1. Compensation lawfully due to employee.
2. Other payment agreed by employers in addition to the law.
3. Payment after ending employment.

1. Compensation lawfully due to employee because of work.

Most important in this category is the payment in return for work, i.e. wage, overtime on regular workdays as well as on days off, and holiday work pay.

The law requires the payment of wages at least once a month. In case of redundancy termination, employer has to give written notice of employment termination not shorter than one pay period, or wage payment in lieu, plus severance payment, and wage in lieu of unused vacation.

2. Payments agreed by employers in addition to those required by law.

Some of the payments are initiated by employers to compensate for difficult work environments, or to motivate employees to improve productivity. The unions may also propose some forms of payment to negotiate with the management. Examples are allowances for shift work, hazardous or isolated work, transportation, meals, lodging, cost of living, bonus, service charge (hotel and restaurant).

Once criteria for payment are set by employers or by agreement with the union, compliance is required. Changes negatively affecting employees require employer's written consent.

3. Payment after ending employment.

There are some other payments due to former employees, e.g. reinforcement of expenses incurred to employees for the execution of duties, the return of surety money in the indemnity contract, monthly or yearly pension (if applicable). Sale commission payable upon full collection of payments for goods sold by former employees is also to be paid to the salesperson concerned.

All kinds of compensation due to employees should alert employers to carefully consider whether it is worth while employing more people than necessary. Some actions are taken as follows: -

(a) Improve efficiency in the management of human resources.

Starting with changing in work procedures, employing people who have potential to learn or do more and better, paying attractive compensation, spacing payments of different types, and continuous staff development.

(b) Change employment policy and practice.

Certain industries have mixed supply of labor comprising directly employed staff, and those employed and supplied by outsiders. The unskilled casual workers often cause defects to be rectified thereby delaying delivery. Yet the use of outsourced employees is growing everywhere.

Entrepreneurs, who wish to see their employees get work on time, and work hard beyond the set hours, should start with themselves paying employees the agreed compensation on time.

PROBLEMS RELATED TO EMPLOYMENT OUTSOURCING

Even over the past few years should serve as reminders for labor suppliers (outsourcers) as well as business operators who contemplate the use of contracted manpower.

Many employers have been replacing a part of their regular workforce with workers employed and paid on their behalf by outsourcers for the following reasons: -

1. To impress stakeholders and the Board with greater productivity per regular or direct employee (whilst part of the work is actually performed by employees of contractors).
2. To reduce staff expenses. Workers supplied by outsourcers are not provided with the same wage and fringe benefits despite performing similar work.
3. To prevent trade unionism or to contain the growth and bargaining power of the trade union. Employees of outsourcers cannot join the existing union, as they are not only employees of the same employers.
4. To earn an image of a fair employer, while labor suppliers are proxied the role of devil.

Many companies have gone too far. There is an obvious exploitation of labor via excessive use of outsourced labor, especially in the mining sector.

The trade unions have started to respond to this growing trend by: -

1. Include the union's list of demands to
 - Limit the number of outsourced labor.
 - Employer to provide outsourced labor with similar compensation and fringe benefits.
2. Provide legal advice to terminated employees to seek justice at the Labor Court – naming the labor supplier and the end user as co-defendants.
3. Change the company union to become an industrial union, so that all employees regardless of different employers or suppliers may also join.

The situation has become so bad that: -

1. There is a scarcity of labor supply in many industrial areas because labor suppliers have created the pool of labor, reserved for themselves on the assistance of regular short term work.
2. Many personnel managers, production managers, join in the business partnering with outsiders. Jobs have been for sales. Jobs are given on sites, but contracts are signed somewhere else. Kickbacks are normal.

Currently, the Zambian Labour Laws do not provide for outsourcing/Labour Brokering though there are considerations by social partners to see how the practices could be regulated without negatively impacting on the conditions of employees.

FIXED PERIOD EMPLOYMENT CONTRACT MAY BACKFIRE

Employers may choose to offer employees either of the 2 different employment contracts, i.e.

- 1. An ordinary employment contract** has an “**open end**” nature. It may specify compensation as hourly, daily, or monthly. Termination date is not specified but commonly understood to be by retirement, death, resignation, or termination with or without severance payment; or
- 2. A fixed period employment contract.** It is also called a project employment contract to identify with employment for non core, or seasonal nature of work. The probation part of a contract does not turn an ordinary contract into a fixed period contract. This type of contract has certain rigidity i.e. indicating starting and ending date, no provision for early termination or extension.

Why do many employers enter into a fixed period employment contract?

1. Multinational companies (MNCs) and Joint Venture Firms (JVs) and expat executives have work plans and work requirements for different types of personnel's who also do not want to be in any country for unknown period of time.
2. Certain types of work need specialists only for short periods, e.g. construction, machinery installation, exploration of oil and minerals, etc.
3. Employees intend to avoid severance payment at the end of work.
4. Employers want to prevent employees becoming members of trade unions.

Why do employees agree to work for fixed period of time?

1. Some employees have no bargaining power and make any offer.
2. Compensation is often higher for work of short duration.
3. Young people are not bound by jobs and location.
4. Employees know that they could, in fact, break the contract and leave any time better job comes along, and that there is always a chance of renewing contract.
5. No Choice because of high levels of unemployment

What are the problems related to fixed period employment contract?

1. If the employer terminates the contract before the set date, he is held in breach of contract. Employee may sue for damage equal to the income foregone for the remaining months (if it was an oral contract). If the Labor

Court rules that it is an ordinary contract, then severance payment must be paid and possibly compensation for damage as well.

2. On the contrary, if the employee breaches a contract and leaves before the end of the contract there is nothing the employer can do.

A SAMPLE OF EMPLOYMENT CONTRACT.

Employment Contract

The agreement is made on this.....between (name of company) whose registered office is at.....

.....

hereinafter called the company, and (name of employee) whose address is.....

hereinafter called the employee.

Now it is hereby agreed as follows

- 1.1.1.1. The company shall employ the employee effective as of (date).....
- 1.1.1.2. Either party may serve an advance notice giving to the other not less than 30 days written notice to terminate employment.
- 1.1.1.3. The normal retirement date for employment is at full 55years of age.
- 1.1.1.4. Annual leave days shall accrue at the rate of atleast 2days per complete month of service
- 1.1.1.5. Sick leave shall accrue at the rate of
- 1.1.1.6. The employee shall:-
 - 4.1 Faithfully serve the company, giving at all times the full benefit of the employee's knowledge, expertise, technical skill and ingenuity.

4.2 Perform such duties and exercise such powers in relation to the business of the company as assigned or communicated to or vested in the employee by the company.

4.3 Obey all lawful instructions given to the employee by or on behalf of the company and comply with all rules and regulations now or hereafter made by the company in connection with the conduct of the company's business.

4.4 Be responsible for the performance of the employee's duties to the (title of superior).

4.5 Devote the whole of the performance of the employee's duties to the execution of the duties.

5. The company shall:-

5.1 Pay to the employee a salary at the rate of Kwacha.....per month such salary to accrue from day to day and to be payable in arrears at the end of each calendar month;

5.2 Annually review the employee's salary to reflect the contribution made by the employee to the company, and development of its business

5.3 Include the employee in the company's provident fund toward which the employee and the company will each contribute according to the company's provident policies

5.4 Include the employee in the company's medical and life insurance policies.

6. The employee agrees to work at and during such times and on such days as the (job title) of the company or as may otherwise be required from time to time, for the purposes of the business of the company.

7. Since the employee is likely to obtain in the course of employment confidential information, trade secrets and know-how in relation to the company and its business affairs, and customers, the employee hereby agrees with the company to be bound by the following restrictions:-

7.1 The employee will not during the employment or at any time.....months thereafter (except in the proper course of the employee's duties or unless ordered to do so by a court of competent jurisdiction or unless such information comes into the public domain) without the consent in writing of the company being first obtained use or divulge to any person, firm or company (and shall at all times use best endeavors to prevent the publication or disclosure of) any information concerning the business, products, know-how, technology, accounts, finances, clients or customers of the company or any of the secrets, dealings, transactions or affairs of the company.

7.2 The employee will not during the employment or for a period ofmonths thereafter within Zambia solicit in competition with the company the custom or business of any person, firm or company who at any time during the employment was a customer or client of the company or who at that date of termination of this agreement was negotiating with the company whether or not such person would commit any breach of his contract of employment by reason of leaving the service of the company.

8. Upon termination of the employment the employee shall forthwith surrender all original and copy documents including computer discs, magnetic media, and etc.or other items belonging to the company.

9. The employee agrees that copy rights of work, innovative invention, development of computer programs or others specified in the law or future amendments thereof if carried out or completed while in the due course of employment utilizing time , money or company's equipments will belong to the company.

10. The employee will not lay false claim to work of others which may cause the company to be implicated infringement of Copyright laws.

11. In addition to the aforementioned clauses, the company and the employee accept the provisions of the labour laws and company's employment regulations as apart of the agreement.

In witness whereof this agreement has been executed the day and year first above-written.

Signed by.....

On behalf of the company ()

In the presence of :.....(Witness)

Signed by.....

The Employee ()

In the presence of :.....(Witness)

LITIGATION ON THE BREACH OF EMPLOYMENT CONTRACT

It is a contractual relationship, verbal as well as in writing between an employer and an employee, not the same as between a contractor and a service provider.

It is advisable to institutionalize employee-employer relationship into a written document referred to as an employment contract to minimize misunderstanding and abuse. Make sure that it contains no provision in breach of the law as it would become unenforceable.

In addition to the contractual provision, written or verbal, some other things whether specifically referred to or not also form a part of contractual relationship between employer and employee. They are the laws, the company's employment regulations, and collective bargaining agreement (in case of a unionized work place). A breach of any of the above leads to litigation in the labor court.

Despite a full awareness and compliance with the company's own rules (registered with the Labor Registrar as required by section 108, Labor Protection Act B.E. 2541), observation of the law and union agreement, one may be found in breach of the law, or the contract, an ordered to compensate the employee. Reasons are: -

1. He employment regulations registered with the Labor Department contains incorrect provisions which were not corrected during the registration. Examples of faulty provisions are **“employer may terminate employee during probation without giving advance notice.”** Or **“notice of employment termination is one month.”** Both as well as many other clauses are incorrect.
2. Misrepresentation of the law and the regulations. Examples are not paying wage in lieu of untaken vacation, or paying wage in lieu of **one month notice.**

3. Neglecting or delaying implementation of agreement made with the union.

Employees are also found to breach the contract in many instances. Most people sign anything upon acceptance of job offer, but later abuse it. Employees who found themselves at a disadvantage when employers rigidly observe their contractual obligations lodged complaints at the Labor Court voicing their disagreement. In many cases, the contracts are found to be unlawful. Examples of unlawful provisions in employment contract are: -

- Different retirement ages for men and women employed to perform similar jobs.
- Restriction against pregnancy.
- Non competitive employment which has no limit of time and place.
- Waiving employee's right for overtime payment because extra hours/days have been factored into high monthly salary.
- Agreeing in advance to work outside normal hours anytime.
- Agreeing to comply with employer's orders even when they are unrelated to work, etc.

There is need for farsightedness and flexibility when writing company's employment regulations, and employment contract. When there is no provision for change in work hours, companies may find it impossible to put employees on shift work, as it requires them to work night hours and rotating regularly.

Most litigations at the Labor Court are related to the breach of employment contract, intended or otherwise by both employer and employee. Initially, the complaint may be lodged with the labor officer.

Either party may disagree with the decision and seek the labor court's order for revocation of the decision. Even after the Labor Court has decided, an appeal on the point of law may be lodged with the High Court.

TAKING ACTION AGAINST EMPLOYEES WITH MALPRACTICES

Each employee presents his employer with different degrees of risk, depending on the type of work he performs, and the managing and control of work. The damage done by an employee may be inappropriate to the disciplinary dismissal.

Damage may be the result of negligence, carelessness, a breach of safety rules, or it may be intentional frauds, diverting company's assets to one's or others' use, swindling the money, forging, signature, faking or copying a product,

causing the company a disrepute, etc. in the manufacturing plants, damaging the company may come in the form of instigating dispute, spreading false rumor, persuading or causing others to slow down work, to refuse overtime work, to walk off the job, or to disobey lawful orders. Some radical employees go as far as physically blocking the entry and exit, thereby infringing upon other people's freedom of movement.

The actions with intent to damage are subject to disciplinary actions up to arbitrary dismissal. Litigation could also come on top, civil as well as criminal.

What measures do employers have against employee's actions to damage?

- 1. Corrective Disciplinary Actions:** Everyone has a reason (good or bad) for wrongdoing. A fair hearing should be arranged to give the alleged wrongdoer the right to be heard. If found guilty, punitive action range from verbal warning, suspension of work without pay, written warning and dismissal.

In case of a termination, there is always a chance that the former employee may someday, sue employer at the Labor Court for compensation for damage on top of severance payment which may or may not have been paid. Naturally it will be difficult to defend the case when documents and people involved are not around. This is why it is better to convince employees to resign. In case of a termination it should be done in writing, stating clearly the wrongful behavior to avoid the complainant of an unfair dismissal.

The basis for unfair dismissal is termination that is discriminatory, or based on prejudice, termination without reason or without sufficient reason, or based on the lack of concrete evidence. Even when there were good grounds for a disciplinary dismissal i.e. in full compliance with Employment Act and the relevant employment regulations, employer will be found to be in the wrong if such wrongdoings were not clearly specified out in the termination letter.

LAWFUL AND APPROPRIATE RESIGNATION

Unlawful and appropriate resignation may cause damage to employer as well as employee or both. We are alerting readers on potential problems along with some management guidelines.

Resignation is appropriate when the resigning employee fulfills lawful provisions act forth in the employment resignation, the employment contract. Though giving up work is an individual right undeniable by the employer (who even put in writing

his authority to approve or disapprove), it is pertinent that employee realizes the potential damage from the exercise of his right.

Resignation procedure to follow: -

- 1. How to resign:** Resigning is effective just the same verbal or in writing. It could be in the form of a personal note, or official personnel form, stating the date of the notification and the proposed effective date, reason or no reason makes no difference. Contractual relationship is over on the date set, after returning company's equipments, documents, etc. Approval or no approval is meaningless. It is advisable to keep a copy of the resignation letter as evidence of having fulfilled necessary and lawful procedures.
- 2. When to resign:** Normally employee leaves after the assurance of a better job, after receiving the bonus, and after giving the necessary advance notice.

Failing to give advance notice as required may lead to litigation for damage. Employer has to be specific on the compensation he wants to demand from employee. He cannot simply withhold payments due to departing employee.

It is advisable to link the obligation for appropriate resignation to the benefits. Employee who resigns after only a few years or given sufficient advance notice of resignation will receive partial or none of the company's contribution.

- 3. Who to hand in the resignation:** Resignation is to be notified by an employee to the employer or management personnel with the authority to hire i.e. senior manager, or HR manager. A resignation letter has to be handed to such person. Dates and signatures of the people involved should be affixed to witness the separation procedures.

Keep a copy for reference. Without a resignation letter, and the disappearance of witnesses, it could be a desertion of duties. Benefits under the social security or provident fund may be lost. There may be allegation of not returning important documents or equipments,

What should employer do when receiving resignation letter?

Good employers care how employees recruited to work adjust themselves to work environment, whether they receive proper counseling from their work mentors and associates, on top of the HR briefing. There must be a standing order for HR Department to conduct an exit interview to find out real reasons for leaving, the frustration or disappointment, and the likes. Correction of the existing ill treatment at the last minute could stop good staff from resigning.

Some organizations established a separation or demobilization procedures so still that departing staff vow never to return. For example;

1. Employee is instructed to stop work immediately, return equipment and ID card. Payment continues till set date, and the interim period treated as paid vacation; or
2. The proposed effective date is changed to “**immediate effect**”. This angers employee who goes to the Labor Court and demand severance payment plus compensation for damage; or
3. Some employers ignore the resignation. Business goes on as normal well passing the proposed effective resignation date. Then after a replacement comes in, employee is told to leave. Employee sues successfully for compensation.

Absence for unknown cause after payday – a de facto resignation.

Many employees stop reporting to work after payday, especially after annual bonus or after new year celebrations. It is not always a de facto resignation. Beware of possible litigation during the subsequent 10 years. The long forgotten employee may have a plaint at the Labor Court that he was fired verbally for no wrongdoing, and without compensation.

The employer may dismiss employee who neglects his duties for 3 consecutive work days or more without a valid cause. Employer is duty bound to find out the reason.

Send a pre registered mail o the employee telling him to report to work and to explain his absence if he still wants to work.

The hasty decision to remove anyone from the payroll without having a resignation letter, or a termination letter with cause is inviting trouble.

As for the employees, it is not enough just to comply with the law and regulations. They have to be accountable for company belongings. Equipments and documents must be returned. Or else the security guard will follow the instruction never to allow them to proceed beyond factory gates.

APPROPRIATE PROCEDURES FOR EMPLOYMENT TERMINATION

Termination of employment is a sensitive issue, and should be handled with care. Apart from the concern for those who lose their jobs, compliance with the law is

required. Termination of employment without reason, or without sufficient cause may end up on unfair dismissal.

Termination with cause

There must be sufficient cause or reason i.e.

1. **Retirement:** When an employee reaches the set retirement age.
2. **Redundancy:** When there is not enough work, i.e. business redundancy. When employer introduces letter work method which can produce more with less people i.e. technical redundancy.
3. **Lack of competence:** Then employee lacks or loses the necessary competence, or physical fitness, to perform work as required under employment agreement.
4. **Expire of contract:** Certain type of employment contract specifies duration of employment. Employment ends when contract ends.
5. **Wrongdoings:** Petty by habitual offences reflect unsuitability causing the loss of confidence to keep employee on the job
6. **Serious misconduct:** This includes intentional wrongdoing, or criminal offense against the employer, dishonest conduct of duties, gross negligence causing serious damage, violating regulations or lawful orders in repetition of earlier written warning, neglecting duty for 3 consecutive work days, or imprisonment by Court Order.

What needs to be done?

For the case of termination stated in 2-6 above.

1. **Make sure that there is no discrimination or prejudice involved.**
Termination could lead to litigation on sexual discrimination, anti union, unfair dismissal.

Review employee's record, performance appraisal, set up a fair hearing in case of alleged wrongdoings.
2. **Consider alternative assignment** in case of unsuitability or redundancy.
3. **An advance notice in writing.** Employee to be terminated have to be notified in writing, stating the reason, effective date. The advance notice period is at least equal to one month's pay.
Only in case of a disciplinary dismissal where an advance notice is not required.
4. **Compensation.** There is compensation required by law (severance payment), by individual employment contract, as well as by collective bargaining agreement.

- 4.1 **Wage in lieu of advance notice.** When insufficient notice period is given, wage shall be paid in lieu. Advance notice stated in the contract may be longer than that stated by law.
 - 4.2 **Wage in lieu of unused vacation.** The portion of vacation untaken shall be compensated for in wage equivalent. The liability for the wage in arrear goes back 2 years.
 - 4.3 **Provident Fund** (if existing) to be paid directly by Fund Manger.
5. **A certification of employment record.** The employer is required to issue a letter of ordinance stating period of employment, and salary.

Note

1. In the case of redundancy, lack of competence, and wrongdoings, it is better to persuade employee to tender resignation letter, offering him/her compensation similarly to the case of termination. This helps prevent potential litigation as a later date. Employee with serious misconduct should be dismissed only.
2. A union member may lodge complaint of **unfair practice** with the Labor Commissioner asking for reinstatement.
3. Employee may sue employer at the Labor Court for damage compensation on top of other compensation above mentioned. If found to be an **unfair dismissal**, damage amount is one month wage for each service year.
4. Before issuing a termination letter (specifying the cause), provide the employee the chance to be heard as a fair hearing, and document the proceedings as evidence.

AN EMPLOYMENT TERMINATION THAT NEVER WAS

Question I was given a very good employment offer. I signed the confirmation, left my job and readied myself for the challenge. Then came a letter canceling the offer. Can I sue my new employer for damage, now that I become unemployed?

Answer You have not started a new job. There is no termination of employment, only a cancellation of an employment offer, probably an employment contract. Obviously you are not entitled to any severance payment. New employment has not started, and thus there is no termination of employment. When there is no dismissal, there is no severance payment, no case for an unfair dismissal.

You may not be able to prove that there was a collaboration between your ex employer and your would be new employer to get you out of job without paying anything.

But check the employment offer which you have accepted and countersigned. There may be a clause stating that the contract may be terminated by either party serving a written advance notice not shorter than 2-3 months. Then sue the company for a breach of contract calling for compensation for damage. There is a chance the Labor Court would order the payment equal to salary in lieu of the advance notice period.

In the worst case scenario, what you signed may be just an employment offer, and not the contract. The other party may even argue that the case is not in the jurisdiction of the Labor Court.

There are cases where some people resigned from their current job even still in the final stage with the headhunters. On the other hand, a few people use their accumulated paid vacation to try it out on a job. After 2-3 weeks of adjusting on new work environment, they go back to tender their resignation with immediate effect.

That is why a long paid vacation takes place after bonus payment. January is the time for appointment and transfer.

COSTS INVOLVED IN AN UNFAIR DISMISSAL CASE

There is no need to have many types of laws in a country where its citizens are committed to enhancing economic development without exploiting human capital however, entrepreneurs in the poor countries dominate and exploit state and business mechanisms to enrich themselves on the pretext that there is no law to illegalize their activities.

Even if there are laws, many breach or evade the laws. In principle, ignorance of the law is no excuse equally for employers, and employees.

Initially when emolument laws came into force, many employers opposed them on the grounds of the limitation of their right to hire and fire their employees. Employment contracts waving employee's natural rights are invalid. It is now universally accepted that severance payment has to be made when terminating employee on redundancy grounds. Arbitrary dismissal without any compensation is possible only if employee is found guilty as stated in section 26A of the Employment Act.

Employment laws now are guidelines for employment practices. Employ the right person for the right job, develop them to suit growing responsibilities and compensation. Labor is not a commodity to be brokered and done away with without cause.

How does the Labor Court view an unfair dismissal?

Briefly it is a dismissal without cause, or without sufficient cause. Employer would be seen as unfair when he dismisses employees whenever his business fluctuates mildly during the low season. It will be an unfair dismissal if the decision is based on prejudice or discriminatory practice, based on sex, color of the skin, union or religious inclination, or personal conflict with supervisors.

An employee who believes that he is unfairly dismissed may choose to lodge his complaint at: -

1. The Labour Office
2. If not contented with the award, the employee may go the Labor relations Court.

How does the Labor Court decide on the amount of compensation for damage?

It is frightening, as well as amusing when looking at the amount of claims made by some employees. No matter what the amount is, the Court may decide against it, if the employer has lawfully dismissed the employee. But if the employee is found to have unfairly dismissed the employee, the Court may order a reinstatement, or compensation for damage equal one month salary for each year of employment.

What are important elements in the Court's deliberations?

Most important are affidavit of the plaintiff and the defendant, documents and individual as witnesses, circumstantial factors. In the end, it is the Labor Court's authority to decide how much the compensation for damage will be, regardless the amount of employee's claim.

The employer bears both financial and non-financial costs when a case is taken to court. The financial cost could be the fee for the attorney and time involved. The non-financial costs which employers have to bear include; the social image of the organization and the management, employee's distrust leading to high staff turnover. Organizing a trade union is always one way employees want to protect themselves against further unfair dismissal.

NECESSARY PROCEDURES FOR DISCIPLINARY ACTIONS

Reward and punishment have stood the test of time as an effective instrument for people management. This is the authority vested in the management. It must be exercised fairly and consistently, with due regard to the law, the company's regulations, employment contract, and collective bargaining agreement made with the union. Complaints made to labor authorities, the Labor Relations Commission, and the Labor Court are all related to abuse of authority. Harsh and consistent measures led to resentment, accumulated grievances, which occasionally exploded into protest rallies, and work stoppages, as well as all forms of industrial actions, such as a go slow, overtime ban, work to rules, etc.

Eventually trade unions emerged to act as a permanent organization to protect and advance members' rights and interests.

What are important elements of fairness and consistency?

1. Employment regulations, contract, union agreement and labor laws.
2. Established procedures.

I. Employment regulations must have provision for code of behavior and disciplinary action.

Enterprises employing persons are required to put their employment conditions in writing, display it for all to see. Employees are bound to observe work hours, attendance and leave procedures, code of conduct, etc and disciplinary actions in case of breach.

Employers shall treat employees without prejudice, in line with established procedures. Wrongdoers have to be disciplined, but clear and conscious counseling to staff as to what are required of them will keep disciplinary actions to the minimum.

II. Procedures for disciplinary action

Staff suspected of wrongdoings shall be treated as innocent until proven beyond doubt of his/her part in wrongdoing. A fair hearing must be arranged so as to provide him the right to be heard. Both causes and consequences, not either one, must be thoroughly considered. Two stages of action are recommended;

- 2.1 Fact Finding. This can be formal, as well as informal depending on the seriousness of the case. Work unit involved and Human Resource Dept. will gather and discuss circumstantial evidence,

motif, behavior, etc. it may end up with counseling by supervisor, or HR manager, or a verbal warning.

If the wrongdoer involves other work units, or persons, or a repetition of earlier offence, or of a more serious stature, a fact finding team may be assigned to review the case. It may be necessary to suspend work of the staff under investigations.

2.2 Imposing penalty. The finding team (comprising HR department, work unit of the accused staff, and representative from other work unit) may propose disciplinary action along with the findings. If a verbal warning suffices, pass the recommendation to supervisor in charge. In case of a strong penalty such as a written warning the HR department manager should co-sign the document with relevant department manager to assure full compliance.

A dismissal without any compensation (section 119) is rare, and need close scrutiny before submitting a dismissal letter to the highest authority or his/her designate.

It is advisable to offer a wrongdoer a graceful exit i.e. a resignation.

In conclusion we recommend;

- 1) **“Fair hearing”** and careful consideration by impartial authority before imposing disciplinary action.
- 2) Amendment of company’s employment regulations to provide for employment suspension during investigation work, and as a penalty short of dismissal.
- 3) Insert provision for termination of employment with severance payment, in case the wrongdoings do not justify a dismissal.

DISCIPLINARY ACTIONS

Management has a right to establish work discipline, code of conduct, and disciplinary actions. Disciplinary actions must be taken within the framework of:

- The law
- The company’s regulations

- Established procedures

As a penalty for wrongdoings by employees, an employer may :-

- Give warning, verbal and /or in writing
- Temporarily deduct wage
- Reduce wage rate
- Suspend employment of employee, paying partial wage or no wage at all
- Delay wage payment
- Force employee to compensate part or whole damage
- Termination with/ without severance payment

WHAT ARE ESTABLISHED PROCEDURES FOR DISCIPLINARY ACTIONS TO PREVENT?

- Suspension of work for investigation purpose
- Fair hearing
- Authorized representation
- Fairness and consistency in imposing penalties
- Right of appeal

CAN AN EMPLOYEE PROTEST AGAINST UNFAIR DISCIPLINARY ACTIONS?

- Grievance procedure
- Lodge a complaint with the Labour officer
- Litigation at Industrial and Labour Relations Court on breach of contract

UNFAIR PRACTICES COMMONLY UNDERSTOOD IN LABOUR RELATIONS LAW

- Employer's retaliatory actions against employee exercising his right under the law
- Employer's disciplinary practice against union members
- Interference by employer in union's activities
- Pressure employee to become/or terminate union membership
- Terminate employment of employees because of union activities

PROTECTION AGAINST UNFAIR PRACTICES

- Fair hearing by impartial committee
- Union representation
- Legal representation
- Complaint with the Labour Officer and/or the Industrial and Labour Relations Court

JOB TRANSFER AND ITS IMPLICATIONS

Job change normally is a part of career advancement, bringing in its path new experiences, new colleagues, learning opportunities, and greater reward. It involves new or greater responsibilities (sometime authority too), change in job title, work location, reporting channel, and approving authority.

Under certain circumstances, a change or transfer of duty may have different purpose, not always a reward, but a penalty. Some companies use "**organization restructuring**" as a pretext to downgrade many jobs, to pressure staff o leave. Some old job titles are scrapped, new ones created with good purpose, as well as opening the back door to early retirement.

Job transfer has to be done in good faith, otherwise employees affected will object to the many changes in employment conditions (work hours, days off, shift work, fringe benefits) that inevitably come along.

Reasons for job transfer

There must be good reasons, and good reasons must be clearly explained, e.g.

1. To provide employee with diverse work experiences and exposures necessary for career advancement.
2. To reward (as well as to penalize) employees.
3. To fill vacancies arises because of organization restructuring, or departure of former job holders.

With the reasons cited above, job transfers should and could be planned and follow established criteria and process. Resentment or disputes occurred because nepotism and favoritism influence the decision more than merit and seniority.

What creates difficulties for job transfer for the business sector?

Despite the fact that the management has the right to manage, difficulties arise, e.g.

1. When there is no clear organization structure (with established position classifications), placements and promotions transfers are at the pleasure of top executives or major shareholders.
2. Where there is no effective mechanism (HR Department) and criteria for decision making involved in the selection process.
3. When there is a lack of proper preparation such as the explanation of reason, career path, compensation and fringe benefits associated with the jobs. Job change becomes a threat.
4. Legal Restrictions.
 - 4.1 Employment Contract. A contract defines the rights and responsibility of both employer, and employee. Job change or relocation may be a breach of contract requiring employee's consent unless it is more beneficial to the employee.
 - 4.2 The union agreement. A collective bargaining agreement signed with the union may have some restrictions against the management's right to transfer union members without first obtaining their written consent.

To end a job, rename it, release to a new work site, transfer employee to a new work place or to perform other jobs not comparable to current ones may easily be considered a change in employment conditions. Employees have the right to

refuse an order for the change. Disciplinary action against “**disobeying**” does not work. Employers order must be fair and lawful.

DELAYED WAGE RAISE: MANAGEMENT NEGLIGENCE OF DUTY

The Employment Act cannot be expected to cover everything as to what an employer can do and what not. The law does not compel employer to give a raise every year, nor does it regulate when or how much. This is a management’s right, the right that is subjected the employment market and the bargaining power of staff.

The Minimum Wages and Conditions of Employment Act, Cap 276 regulates the minimum wage for the protected employees through statutory Instruments which are reviewed every two years.

As far as the payment of wage is concerned, the agreed amount has to be paid atleast once a month on the agreed date less personal income tax. It may be paid in cash as well as though employee’s bank account.

Employers often put in the employment contract, or in the company’s employment regulations that wage rates will be reviewed annually.

Wage raise should be budgeted for a year earlier. Criteria for wage raise should have been established, made known to all employees, and followed. Managers/supervisors should have been trained to evaluate performance of their subordinates in the fairest manner taking into account key performance indexes, attendance records and the likes.

Though employees naturally expect increase in this wage, their wage rate may stay unchanged. To reduce or remove any of them need employee’s consent in writing.

The Human Resource Department will coordinate all the activities, check how criteria are met, and submit the end result for endorsement by the Chief Executive Officer. The change remains unofficial and confidential until them.

There is no significant saving but considerable damages in delaying annual wage raise. Late approval reflects a lack of concern, a negligence of duty, and wrong prioritization of the management. Late approval with retroactive effective date, on the other hand, lead to

1. Frustration among employees all of whom expect to be rewarded with higher pay to match their growing expenses and contributions.
2. Doubtful performance appraisal result with evaluation period not corresponding with effective pay raise.
3. Payment in arrear not only for wage; but also for overtime, personal income tax, social security, NAPSA-all have to be recalculated, a headache and a waste of time for Human Resource Department staff.

Staffs have done their jobs during the year as instructed to. It is only right for employers or the management to show their gratitude by rewarding them with the right amount, at the right time.

17.0. PREPARING FOR ANNUAL WAGE RAISE

December is time again to make a decision as to how much wage increase is to be given to staff. Effective date for the raise for many companies is January, This is also the time to announce bonus payments.

Problem is how much and how to?

Bonus payment varies according to company's policy and financial situation, fixed as well as variable or combination of the two (reference ALBERT 18, 2005).

How much should be for a wage raise this time?

A few companies are bound by union agreement to stick to definite percentage point. Others are free to vary the raise acceding to company's performance, market situation, changes in consumer price index, or inflation.

Report findings of compensation survey are vague. Each company is better advised to carefully review the following: -

1. Make a comparison of the company's record over the past few years with your peers. Don't treat this information as confidential when you can easily get it from any employee.
2. Make a comparison with other companies in the neighborhood.
3. Consider the company's financial standing, general economic situation, particularly changes in the consumer's prices indexes.
4. Assess management's credibility and staff-management relation situation of the company.

Special provision should be made for staff with special talents or potentials needed by the company. Not every executive deserves a raise, but rather a severance payment if he/she does not perform.

What should be the BASE to calculate a wage raise?

1. Some companies have worked out **Salary and Wage Structure** providing increments for every level, in all classifications.
2. Some companies maintain **Salary and Wage Structure** providing only floors and ceilings for each classification. Wage raise is decided each year in percentage points according to the results of performance evaluation. Percentage points are worked out on;
 - 2.1 salary of each employee as base
 - 2.2 average salary of all employees in same classification as base
 - 2.3 mid point (between floors and ceilings) of each classification as base.

Companies with many employees in the upper part of salary structure of each classification will bear extra cost if the average salary is used as base.

Companies caring for young and better education may prefer 2.3 to advance the young on their salary ladder to retain them against headhunting.

Effective date of the raise

Salary raise should be effective on a regular date each year to avoid payment in arrear which will necessitate recalculations of personal income tax, provident fund, overtime payment, social security contribution, etc. Failure to communicate the reason for smaller increases, or delayed increase make the matter worse.

If your annual wage raise is in April, stick to it, as long as the bonus payment is in time for a happy new year.

What to do when performance evaluation is biased, most people rated it

Unconcerned evaluators rate many subordinates quickly resulting in high raise, and unfairness when compared with others who are rigidly assessed.

We recommend a delegation of authority plus responsibility to managers don to supervisors. If 8% is to be budgeted for a salary raise, work it out in terms of the money for each department to distribute it as wage raise for all who are eligible. Some star performers may get 10% while substandard staff gets lower, or even zero.

DON'T LET OVERTIME PAYMENT KILL STAFF DEVELOPMENT PROGRAMS

Capability of staff is a prerequisite for the efficiency of an organization. That is why enlightened management sends their employees to attend training activities. Training cost is investment. Some employers, nevertheless, spare no time nor expenses for staff development, but pirate the needed people with a higher offer.

Why employers do not organize staff training activities

1. Small business has limited budget and time to be allocated for staff training.
2. Lack of interest and commitment for staff advancement allows learning by doing to be management norm.
3. Misbelieve in the work of educational institutes.
4. Liability to pay overtime and holiday wage when training takes place outside work hours.
5. Resignation by staff after training causes employers to prefer pirating needed staff from others.

Don't expect too much from colleges or universities. They only help young people to advance through self development and further training at work. With little self development and poorly managed skill training at work, organizations are doomed.

Large size companies which used to conduct their staff development programs at weekends, or evening hours creating good staff management relations and company spirit now shy away when having to provide overtime and holiday wage on top of expenses for rooms and board, resource persons and training materials. It is not the money that matters, but the rationale for the payment that put a brake on training activities.

How shall we organize training programs outside work hours without paying the attendants?

All employees look for advancement. They have to earn it. Employers should pay for training expenses, while employees must contribute time and effort. The following are our advice;

1. Arrange training programs that bear relevance to work and employees at different levels.
2. Make it a condition that eligibility for advancement is attendance and satisfactory performance in training programs.
3. Attendance is voluntary, not required.

Without the order to attend activities outside work hours, employers are not obliged to pay overtime money.

In addition, companies should take annual performance seriously. Those who do not participate in company activities score poorly in basement rating. They are not candidates for job opening in higher positions. When business gets tough, many of these people will be made redundant.

Paying staff to learn anything usually ends up with them learning little or nothing. Only those willing to learn will benefit fully from staff development programs.

LOOSENING EMPLOYER'S OBLIGATION

Negotiation occurs everywhere, between individuals as well as collectives until mutual agreeable terms are concluded.

As for employment, employers and employees negotiate various terms to reach an employment contract. It is called a "**Collective Bargaining Agreement**" when the employment terms are settled via union management negotiation. For Zambia, the Industrial and Labor Relations Act Cap 268 of the Laws of Zambia sets forth collective bargaining procedures. The agreement concluded is registered, approved by Ministry of Labour and Social Security and is binding through the period specified.

Calling for amendment of the agreement is not an exclusive right of the trade unions. Employers may also call for a renegotiation to change employment terms. There is time for some employers to call for removal or reduction of compensation erroneously agreed during the time of rising wages and prices.

Yet it cannot happen at any time. A few weeks prior to the expiry date of the CBA will allow enough time to deliberate on new terms, normally slight changes only. Employers calling for reduction of compensation to their employees should not be branded "**milking the cows to death**". Teijin Polyester (Thailand), a company required for good labor management relations negotiated successfully years ago to reduce annual bonus from 3 months down to 1.75 month. A group

of greedy unionists denounced the agreement and sued Teijin Polyester and the union at the Labor Court for collaboration to reduce employees' benefits.

VARYING BONUS PAYMENT

Payment of bonus is a part of wage and salary administration work, even though by definition, bonus is not a part of wage, but a part of compensation for the job well done.

Generally payment of bonus comes at year end when we are quite certain of a profitable year round performance. It works like a new year present, an appreciation for staff effort.

The amount of bonus may be estimated or budgeted for, but it should not be fixed though the company's regulation or through an agreement with the trade union.

Criteria for bonus payment may include, but it is not limited to;

1. Payable to anyone who remains employee on the day of payment. (some companies laid off hundreds of employees a few days ahead of the bonus and saved a few millions).
2. Appropriate payment for employees with more than 6 months at work up to bonus payment date. (Those who joined late, or left earlier are not paid).
3. Payable if the performance of the company is successful, even in the absence of shareholders' dividends.
4. A partial payment may be made in the middle of the year or in May to help with educational expenses for staffs' children.

It is advisable, not to agree or predict a definite bonus rate. But there should be a set policy for bonus payment to be a certain percentage point of the profit, similarly to that for dividend, reserve, investment, etc. It should not be "bonus at will" payable when or how much up to the management sees fit.

I. How should annual bonus payment vary?

- 1.1 it should be related to the company's performance and financial situation, i.e. no profits no bonus, small profit small bonus. Banks hardly approve loans for losing companies to use as bonus.

- 1.2 It should be related to the difference in employees' efforts as shown in the result of their performance appraisals. Some employees blame their poor performance rating on management's prejudice, and demand fixed and equal bonus rate.
- 1.3 It may be varied according to classifications and types of staff. This appears unfair. Management level or high classification staff enjoy higher base pay, bigger multipliers create bigger gap. On the contrary, some manufacturing plants provide same rate but add a fixed amount as a top up for lower paid employees.
- 1.4 Bonus may vary in accordance with years of service among types of work that give similar wage rates to long service employees and newcomers (jewelry, garment, footwear, food processing). Extras are given priority to years of service
- 1.5 Certain business has small bonus as an established practice, i.e. hotels and restaurants with 1-2 month bonus. More important here is monthly service charge.
- 1.6 Management policies are also the cause of differences. Some companies set bonus very high, but monthly pay is set quiet low.
- 1.7 **What should companies fixing bonus payment at high rate do, when profits drop?**

Some employees in companies with good employee relations accepted the cast. They affix their signature as evidence of consent. Others sued the employer for breaching the agreement and won (at Thai Namsiri Textiles). There should be no agreement for a guaranteed bonus payment regardless of loss or profit.

There are, however, companies in the Birla Group who agreed on a 3 years contract guaranteeing 3-4 month bonus per year, as they are confident in their continuous profitable operations.

II. Can we reduce the agreed bonus rate, how?

It is difficult, but should be attempted through timely renegotiation with the union, or through written agreement individually with employees. Those who refuse to understand and cooperate risk redundancy termination.

Another way to transfer a part of bonus into the salary structure. This will reach to bigger pay on O/T, social security, provident fund,. Employees will reach ceiling rates faster, thus slowing down the increase later on. Employees are quite happy as there is no need to wait for bonus at year end, and may alleviate the need for loan during the year.

Other things happening when bonus is drying up, e.g. laying off, voluntary separation program, freeze of recruitment, subcontracting out work to save cost, or using labor on low wage.

MEASURE TO PREVENT WILDCAT STRIKES

Question How can we prevent unlawful strike?

Answer Wildcat strikes are work stoppage led by shop floor leaders, premature, unlawful but effective measures which result from weak or slow bargaining at the top by union leaders. Work stoppage is also used as a kind of protest against bad management decision, as well as a measure to force an agreement. It may take a form of a peaceful or noisy “**sit down**” strike, or a “**lay down tool**”, or a “**walk off**” en masse. Before reaching this stage, there are often some forms of industrial actions ranging from a pre-work, post work rally, a Go-Slow, an overtime ban, or an organized paid vacation.

Wildcat strikes often take the employers unprepared. The unions do not like it either, as their leadership is challenged by “**irresponsible elements among the rank and file**”. Like it or not, wildcat strikes are often endorsed by the unions. Very few unions take action against their own members.

As wildcat strikes are unlawful and very damaging, with the law enforcement agencies being of no help, we should consider how best to prevent wildcat strikes in the work place.

- 1. Improve employee relation work of the Human Resource Department.** We mean more communication, more motivation, and not just supervision of work or disciplinary actions as many firms tend to concentrate. Create a company spirit, not fear, or suspicion.
- 2. Encourage workers’ participation in company’s activities.** We mean sports and recreation, self development programs, suggestion schemes for improvement in work methods, etc.
- 3. Create a Self help, mutual help projects.** Useful projects are the set up of a Credit Union, or Staff Savings and Loan fund, Funeral Support Scheme. We must free our staff from falling preys to loan sharks, or victims of consumerism activities.
- 4. Set up adult education program.** This will help workers to continue with “out of school education” to give them hope for career advancement.
- 5. Educate staff on Labor Laws.** As employers must comply with the provision of the laws, let employees know also what their rights and obligations are. If there is a union, invite responsible experts to explain to them what unions could or could not do.

6. Train all managers the art of managing people. Disputes are developed from dissatisfaction of managers handling their subordinates. To reduce potential trouble, put managers and supervision in classes. Remember, most workers do not leave jobs or their companies, they leave their managers.

The measures proposed are not costly, and not time consuming. We are strongly against repulsive measures, as well as litigation. Though we may still come up with better ways of doing things, there is no better time to put the above measures into action than now.

KEEP COOL WHILE WORKERS ARE ON STRIKE

Question What should employers do during workers' strike?

Answer Strike does not happen as frequently as we are led to believe. Employees today resort to industrial actions such as Go Slow, or Overtime Ban, Sick out, etc to pressure employers to agree to improve their employment conditions.

Both the employers and the unions have to follow collective bargaining procedure set out in **Industrial and Labor Relations Act, Cap 268 of the laws of Zambia** Only after negotiation, and compulsory conciliation fail, then employer may choose to declare a lockout, or the union declares a strike

Employers stop wage payment during such work stoppage. An unlawful strike may lead to employers firing workers without severance payment.

But what should employers do when there is an unlawful strike?

1. In case of a partial strike, provide protection to employees entering or leaving their work place, e.g. shuttle bus service, police escort, etc.
2. Subcontract out work to be done outside, or bring in indirect workers to handle worker left by strikers.
3. Be ready to return to negotiation table for a renegotiation of the remaining differences.

Followings are our comments to opinions and questions raised by our clients/subscribers.

Question I During the strike, lawful or otherwise, there are threatening rallies, outside, lot of drinks and rowdy behavior, should we call in the police?

Answer The police is already short of manpower. Police patrol car cruising or dropping by briefly is enough. Avoid confrontation.

Question II There are often damages during the strike, as well as derogatory remarks, which are libel and criminal in nature. How do we respond to the proposal to take to disciplinary or legal action against wrongdoings?

Answer If employers have to choose between protracting work stoppage and forgiving, then forgive but not forget. You don't have to win every battle to win the war. Bad apples will be sorted out in due time.

Question III why some employers respond immediately with a lockout notice when unions declared a strike vote?

Answer Industries with continuous process, or with perishable products and raw materials treat strike notice as a real strike, (even if it is only a threat). A lockout (24 hour advance notice is required) is advisable to prevent irreparable damage.

Question IV An overtime ban really hurts. We miss the shipment, and are heavily fined for delayed delivery. We would rather have a strike for a few days rather than a prolonged or unpredictable overtime ban.

Answer Yes a few day strike hurts less. We could recover the production loss in a few days after the return to work. Consider maintaining some inventories of raw materials and finished products to have bargaining power. Manage your work force to handle multiple functions so as to mobilize the loyal group to handle work left by those who join the O/T ban

OT ban will be effective for a few days only. Most employees need to work OT to maintain their families. Announce a registration scheme for OT volunteers who are promised OT ban will not be given OT work. They will toe the line, or leave.

For crucial work, put it on a 3 shift operation. Then there is no more overtime work.

Question V should we agree to workers or unions bringing in their advisors to the negotiation table, or to mediate the dispute?

Answer Check the advisor's backgrounds. Many are knowledgeable as well as reasonable. With the experience, dispute may be fairly settled. To keep them outside does not mean you can stop them from helping your employees. In many cases they can be more effective than labor officers.

Remember, whether you are facing a lawful or unlawful work stoppage, keep a warm heart and a cool head. Apologise if you have been neglecting your employees for too long.

Paid sick leave, genuine or fake, cost us more than a few days of work stoppage. There is always some enthusiasm and increased productivity after the break.

18.0. GOVERNMENT'S ROLE IN THE SETTLEMENT OF LABOR DISPUTES

Labor disputes may be discussed in 2 different circumstances, i.e.

1. Individual dispute is between individual employee (s) and his employer regarding a breach of employment law and employment contract. The focus is on employer's rights and interests under the Employment Act
2. Collective dispute is between a group of employees, generally unionized and their employer. This is related to the failure to settle their differences through negotiation to change employment conditions specified in their earlier collective bargaining agreement.

Industrial dispute, individual or collective, could be disruptive and damaging to a smooth operation of industry and trade.

The Government has important role not only in the prevention of dispute, but also in its settlement through compulsory conciliators, by labor officers, voluntary arbitration and deliberation by the Court.

Lets use see how labor disputes could be resolved;

1. Dispute between employer and employee. There are thousands of complaints made against employers ranging from default of wage payment, failure to pay for overtime and holiday work, forcing employees to work overtime or on holiday against their consent, breach of employment contract, discriminatory practices, etc. The complaints are the result of ineffective human resource management, and the malfunctioning of the grievance procedures. Aggrieved employees may choose one of the following corrective channels.

- 1.1 **Lodging complaint with the Labor Officer** . This may be done verbally as well as in writing. The Labor Department will summon the employer to appear in person for explanation. The Labor Officer may issue an order for employer to take corrective action.

Employer should detail in explanation in writing, bearing in mind that labor Officer are not acquainted with business or industrial operations.

- 1.2 **Litigation at the Labor Court.** Many employees choose to bypass the Labor Office and take their complaint to the Labor Court demanding payment for wage in arrear,-relevance payment, wage in lieu of unused vacation, wage in lieu of advance termination notice, and in some cases, compensation for damage from unfair dismissal. Employers are then summoned to present their side of the story.

Winning or losing the case depends on factual information and the expertise in pressing it.

- 1.3 **Dispute employer and the trade union.** This is the most worrisome for many employers who have to negotiate with the unions almost every year. A union, knowing not what else to do, submit a list of demands to seek more of everything. There is always a threat of disruptive actions through a Go-Slow, Overtime ban, and outright work stoppage. The employer's threat of a lock-out cannot be effectively deter the union and members.

Words of Advice. Do not count on mechanism of the state to settle labor dispute! What needs to be done is to develop workable in-house staff-management relation through regular communication and staff participation. Improve your human resource management practice, and develop a system of regular consultation through mutual respect to replace confrontation and accusation.