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PROTECTING CIVIL LIBERTIES &
PROMOTING HUMAN RIGHTS **FOR ALL.**

NGO GUIDE TO LABOUR LAW IN UGANDA



2017

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INTRODUCTION

This booklet simplifies labour issues for Non-Governmental Organisations (NGOs) in Uganda. It provides information on employment rights, duties, and equality at the work place for staff, casual labourers, volunteers, interns and apprentice. It also highlights on sexual harassment, child labour and other related actions that violate rights of individuals at the work place.

The guide reviews relevant provisions under the 1995 Constitution of the Republic of Uganda, the Employment Act and the regulations, the Non-Governmental Organisations Act 2016, the NSSF Act, and other related laws.

It is hoped that the reader will be able to understand their rights and responsibilities at the work place and provide basic knowledge to understand when rights have been violated to be able to seek redress.

OBJECTIVES

The key objectives of this guide is to give CSOs and persons working in the NGO sector information on how to deal with labour and labour related issues in their work. This guide is aimed at simplifying the law relating to employment and labour relations for NGOs to enable them apply the different principles as set in Ugandan laws.





GENERAL ISSUES ON LABOUR LAWS

Who is an employer?

An employer is a person or a group of persons (including companies, NGOs, local government, government, a governing body of an unincorporated entity) for whom an employee works or normally worked or sought work under a contract of service.

From the definition of employer the following can be noted;

- a. an employer can be an individual, a group of people, company or any entity.
- b. an employer includes the present employer, past employer or a person from whom a employment is being sought.
- c. Employer includes all persons who succeed the employer, those assigned by him or those who take over the business of the employer.

Who is an employee?

An employee is a person who has entered into a contract of service or an apprenticeship contract. It includes all persons employed in private entities such as NGOs or Companies, Government workers or those employed in local government. It however does not include persons employed by Uganda People's Defense Forces (UPDF) or Uganda Police Forces (UPF).

What is a contract of service?

A contract of service is any contract whether written or oral, express or implied, where a person agrees in return for remuneration, to work for an employer and includes a contract of apprenticeship.

What if I do not have a written contract, can I be considered an employee?

Yes, a contract of service (or a contract for employment) can be written or oral. It can also be express, for example, where the person expressly tells another to work for him or her for a pay. It can also be implied; this is where there was no written contract and there was no oral communication that someone is working for another but the relationship the two people establish is such that one works for the other and gets paid or expects to be paid.

All the above situation gives rise to what can be termed as an employer-employee relation.

What if a person is a casual employee, does he or she have the same rights?

The employment Act defines a Casual Employee as a person who works on a daily basis where payment of wages is due at the completion of each day's work.

From the definition above, the casual laborer is a person working and being paid on a daily rate. It does not matter what the person is doing. Such a person has the same rights as other workers for as long as he/she is still employed or has rights accrued from the employment.

Do casual employee have rights?

Yes, a casual employee has rights to wages. He/she should be paid according to the agreed wage and time.

When a person works as a casual employee for a continuous period of four (4) months, that person is entitled to an employment contract and can be treated like any other employee. (See Employment Regulations, 2011).

A person cannot be employed as a casual employee for a period of 6 months or more. This means the moment the person is employed as a casual employee for 6 months; he/she automatically becomes a full employee with all the benefits.





VOLUNTEERS, INTERNS AND APPRENTICE

Many NGOs in Uganda use interns, volunteers and other categories of persons. The names given to volunteers and interns may differ across organizations but the common practices among most organizations are:

1. Volunteers or interns do not get salaries.
2. Some organizations give interns and volunteers some kind of benefit or allowance for upkeep (this does not apply across all organizations and all volunteers within the same organization).
3. Most volunteers or interns are persons who are learning and are either sent by institutions of learning such as universities as part of the requirement for their education or are on holidays but generally work with the NGO to gain hands-on-experience.
4. Some interns or volunteers are experienced persons, mainly retired persons who come to give a hand to the organization in one way or the other.

The different ways organizations treat volunteers give rise to a number of issues that may need to be looked at. Some practices can qualify the volunteers or interns to be treated as employees for different laws. They can also qualify to be on apprenticeship depending on the circumstances. Below are some of the areas to be considered.

Is a volunteer considered an employee?

The law will treat a volunteer as an employee depending on the nature of arrangement that exists between the volunteer and the employer. Where the volunteer receives regular payment in form of upkeep, such can be considered a form of employment. (This can be applied under laws such as the NSSF Act).

Who is an apprentice?

An apprentice is a person who is worker who is engaged primarily for purposes of receiving training in a trade or profession.

From the definition above, interns or volunteers (or whatever name an NGO calls them) who are engaged by the NGO for purposes of gaining skills in particular sectors are apprentices. This would include two categories of people who commonly engage with NGOs and these are:

1. Volunteers or interns sent by institutions of learning for purposes of practising a certain profession whether from within Uganda or outside.
2. Volunteers or interns who are engaged by the organization for purposes of learning or gaining experience.

Who qualifies to be an apprentice?

According to the employment regulations, a person with a minimum age of seventeen (17) years qualifies to be employed as an apprentice.

It should be noted that the law provides for a minimum age but does not provide for a maximum age. This means any person aged 17 and above years can be an apprentice.

How long should an apprenticeship be?

A person can enter into a probationary period for an apprenticeship for a maximum of three (3) months. After this a person can enter into an apprenticeship for a maximum of three (3) years.

Are there any special requirements for engagement of apprentice?

Yes, the law requires apprenticeship contracts to be registered with the Labour officer.

The law also requires the employer to confirm an apprentice on probation within twenty one (21) days after the expiry of the probation period.

What are the rights of an apprentice (intern/volunteer who is engaged for purposes of learning)?

An apprentice, intern or volunteer has the same rights as an employee. They should not be discriminated against. See rights of employees for details.

However, there are some limits on the rights of an apprentice or a person engaged to learn. For example such a person can not claim that he/she has been subjected to forced labour if the work he or she is engaged in is part of the education requirements.



RIGHTS OF AN EMPLOYEE

Uganda's laws provide for different rights of employees. The rights are to be observed both by the employer, the employee and all persons that will be engaged in the course of employment. The rights of an employee cover all categories of employees and cannot be applied discriminately. All employees in an organization have these rights.

What are the rights of an employee?

The following are the rights of an employee.

Article 40 of the Uganda Constitution provides that:

1. Every person in Uganda has the right to practice his or her profession and to carry on any lawful occupation, trade or business.
2. Every worker has a right to form or join a trade union of his or her choice for the promotion and protection of his or her economic and social interests;
3. Every worker has a right to collective bargaining and representation.
4. Every worker has a right to withdraw his or her labour according to law.
5. Every woman who is a work has a right to be accorded protection during pregnancy and after birth, in accordance with the law.

Under article 42 a person appearing before an administrative official or body has a right to be treated fairly and justly. This means a worker has a right to be heard in any administrative decision, which is to be made against him or her.

A worker has a right to apply to a court of law if he/she is not satisfied with the decision of a tribunal against him/her.

A worker has a right not to be discriminated against at work. This is both a constitutional right and a right recognized under the Employment Act. The right to non-discrimination entails the following:

1. All workers should be treated equally at the place of work.
2. All workers are entitled to equal pay for equal work done.
3. Some workers may be entitled to affirmative action due to historical or other facts that disadvantage them.

Other rights of the employee include;

- a. A right to rest after a period of work.
- b. A right to reasonable working hours.
- c. A right to holidays and where a person works on public holidays, a right to a pay for the services rendered on those days.
- d. A right to an annual leave within 12 months.
- e. A right to receive remuneration for the services offered.
- f. A right to a payslip itemizing the payments made by the employer and all deductions
- g. A right to sick leave.
- h. A female worker has a right to protection during pregnancy and after birth (in accordance with the law).
- i. A right to maternity leave in case of a female worker.
- j. A right to paternity leave in case of a male worker.
- k. All other rights that accrue to human beings accrue to a worker.





DUTIES OF AN EMPLOYER

An employer has several duties he/she must fulfill in relation to the employment provided to different people. Below are some of the duties.

What are the duties of an employer in relation to his employees?

There can be several duties of an employer some of them include;

- a. An employer has a duty to give his/her employees work in accordance with the agreed contract of employment.
- b. Where a contract of employment is signed, the employer has a duty to give the employee a copy of the signed contract and retain a copy on the organisation's file.
- c. Every employer has a duty to pay his/ her employees an agreed wage. The wage is paid at the end of every agreed interval e.g. daily, weekly or monthly.
- d. Every employer has a duty to pay his/her employees their wages in an agreed legal tender at the place of work. The payment shall be at the place of the employees work or in a financial institution authorized by the employee.
- e. Every employer shall give an employee an itemized pay statement in writing stating the amount of money paid and every deduction made for the pay period. The itemized pay statement shall be in a language which the employee is reasonably expected to understand.

- f. Every employer is required to make permitted deductions from the employee's pay. The deductions may be permitted by law or by agreement. Some common forms of deductions include tax deductions such as Pay As You Earn (PAYE), Social Security Deductions under NSSF Act, subscription to trade unions etc. The employer does not need consent of the employee to effect deductions required by law.
- g. Every employer has a duty to register with different authorities where the nature or size of work requires so. For example, registration with NSSF, registration with tax authorities, registration of apprentice contracts, with labour office etc.
- h. Every employer shall keep a record of details of all persons he/she employs. This include records of personal details such as names, age, serial number, ID card number; records of wages and payments such as salary and other benefits; records of work such as kind of work and related matters like days off etc.
- i. An employer under the NGO Act is expected to keep a list of foreigners employed by the NGO including details such as positions they hold, their qualifications etc.
- j. An employer under the NGO Act is expected to have a plan on how to replace foreign employees working with the NGO. The plan should be submitted to the NGO Bureau as part of the annual returns.
- k. An employee under the NGO Act is expected to ensure every foreign employee working with the NGO is legally in Uganda. Some of the things to check for include;
 - i. Ensuring the foreign employee has a work permit allowing him/her to work in Uganda.
 - ii. Ensuring the foreign employee has a certificate of no criminal record from his country acquired before the employee left his/her home country.





EMPLOYMENT OF CHILDREN

Who is a child?

Under the constitution of Uganda and the Employment (employment of children) regulations, 2012, a Child is a person aged 18 years and below.

What is Child labour?

Child labour refers to the employment of children in any work that deprives children of their childhood, interferes with their ability to attend regular school, and that is mentally, physically, socially or morally dangerous and harmful.

Child labour in Uganda is prohibited?

Yes Child labour is against the law. A person should not employ a child in work that would interfere with his or her education or one that is beyond the physical or mental capacity of the child as described below.

What kind of activities can a child be engaged in?

A child can be engaged in any kind of work provided it meets the following requirements:

1. If the work is relative to the child's age, mental capacity and health.
2. If it does not interfere with the Child's right to education.

3. If it interferes with the child's right to play.
4. If it is not socially harmful to the child's religion or culture.
5. If it is for the general education of the child.

Any kind of labour that does not meet the above becomes child labour. A child should basically be engaged in light work.

What is light work in relation to child labour? What kind of activities are prohibited by law?

“Light work” means work, which is—

- a. Not harmful to a child's health;
- b. Not harmful to a child's development;
- c. Not prejudicial to a child's attendance at school;
- d. Not prejudicial to a child's participation in vocational training; and
- e. Not in excess of fourteen hours per week;

Light work permitted in relation to child labour.

What are the permitted hours of work for a child?

According to the Employment (Employment of Children) Regulations, 2012 Statutory a child aged between fifteen and eighteen years who has completed his or her education or does not attend school, may work up to seven hours a day but shall not exceed thirty five hours per week.





DISCRIMINATION AT WORK PLACE

What is discrimination?

In Uganda any form of discrimination is outlawed by the constitution. Discrimination under the Uganda constitution is giving different treatment to different persons because of their sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.

Under the employment Act, discrimination is giving different treatment to different employees based on their race, social background, sex, creed history, disability, HIV/AIDS status, political opinion etc.

The definition of discrimination further extends to treating people differently on the basis of their sexual orientation.

What form does discrimination manifest at the work place?

There are many forms in which discrimination manifests at the work place. These range for many practices. Some of them include:

- i. Giving different pay for same work and position.
- ii. Giving different benefit for different staff occupying same position.
- iii. Denial or benefits for different people because of their social or economic background.

Are organizations mandated to have non-discrimination policies?

Whereas the law does not make it mandatory for an organization to have a non-discrimination policy, it is important to organizations to have such policy in place to guide it in its work and the relationship between the staff, the organization and its clients.

What remedies are available for someone who has been discriminated against at work?

A person who has been discriminated against can handle the issue internally with the organization where the organization has a clear laid out non-discrimination policy or systems. However the person can chose to handle these issues outside the organization by making a complaint to the labour officer or to courts of law.





SEXUAL HARASSMENT

What is sexual harassment?

Sexual harassment in relation to employment means any of the following situations;

- a. A direct or implicit request to an employee for sexual intercourse, sexual contact or any other form of sexual activity that contains-
 - i. An implied or express promise of preferential treatment in employment;
 - ii. An implied or express threat of detrimental treatment in employment;
 - iii. An implied or express threat about the present or future employment status of the employee;
- b. Use of language whether written or spoken of a sexual nature such as unwelcome verbal advances, sexual oriented comments, request for sexual favours, jokes of a sexual nature, offensive flirtation or obscene expressions of sexual interest that are addressed directly to the person;
- c. Use of visual material of a sexual nature such as display of sexually suggestive pictures, objects or written materials or sexually suggestive gestures; and showing physical behavior of a sexual nature such as unwanted and unwelcome touching, patting, pinching or any other unsolicited physical contact.

The above must directly or indirectly subject the employee to behavior that is unwelcome or offensive to that employee and that, either by its nature or through repetition has a detrimental effect on that employee's employment, job performance or job satisfaction.

Is there a requirement for an organization to have a sexual harassment policy?

The Employment (Sexual Harassment) Regulations, of 2012 require any person who employs 25 or more people to have a sexual harassment policy. Though organizations that employ below 25 people may not be required to have this policy by law, it is normally good practice for every organization to have the policy.

What are the key issues that sexual harassment policy of an organization should focus on?

The following are important when developing a sexual harassment policy for an organization;

1. A clear definition of sexual harassment at the work place (it would be important that such definition does not conflict with one provided by the regulations).
2. Capture circumstances unique to the organization that may promote sexual harassment.
3. A provision that makes sexual harassment at work unlawful and provisions for sanctions in cases where this is violated.
4. Care should be taken to cater for power relations and ensure minority or staff who are vulnerable (either because of their sex, position in the organization or social standing e.t.c.).
5. Mechanisms through which workers can report cases of sexual harassment without being punished or stigmatized after.
6. Provide for mechanisms to address sexual harassment at the workplace. The mechanisms should be such that they do not stigmatize possible victims.
7. Make a policy in the most easily understandable form or language commonly used at office. This should be able to cater for needs of different levels of staff e.g. staff who may not be able to read and comprehend English.

What are the duties of an employer when it comes to sexual harassment?

The employer has several duties when it comes to sexual harassment at work. Some of them include the following;

1. The duty to put in place measures that ensure sexual harassment does not happen at work or during work.
2. A duty to ensure that where sexual harassment happens at work, there are measures to address it.
3. A duty to provide each employee with a copy of the sexual harassment policy.
4. A duty to provide to each new employee a copy of the sexual harassment policy upon commencement of employment and inform the employee of his or her right to report cases of sexual harassment.
5. A duty to post the sexual harassment policy in a conspicuous area at the workplace or make it easily accessible for all staff.

6. A duty to post the names, positions and telephone contacts of the members of the sexual harassment committee in a conspicuous area at the workplace and to ensure all staff are able to access places where they can lodge complaints.

What are the duties of an employee when it comes to sexual harassment?

Generally, the employees duties in relation to sexual harassment are two;

1. Not to engage in activities that can amount to sexual harassment, and
2. To report cases of sexual harassment that happen to him or her.



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