

THE LABOUR ACT, 2003 {ACT 651}

An Overview

Authored by: Stephen Osei-Kissi - Head of Greater-Accra Regional Secretariat



BACKGROUND INFORMATION

- The Act was passed by Parliament of the Republic of Ghana on 25th July, 2003.
- Presidential Assent on 8th October, 2003.
- Gazetted on 10th October, 2003
- The Act came into force on 31st March, 2004.

NATURE & SCOPE

- An important piece of social legislation which requires willingness of social partners to accept and embrace change
- Gender sensitivity: he or she; him or her.
- Provides new vocabulary and therefore requires that the language and vocabulary developed over the past years must be discarded or changed.
- It is a blend of the letter and spirit of the 1992 Constitution and those of the ILO Conventions.

NATURE & SCOPE (cont'd)

The Act applies to all WORKERS and to all EMPLOYERS except:

- ▶ The Armed Forces
- ▶ The Police Service
- ▶ The Prison Service
- ▶ The Security & Intelligence Agencies specified under the **Security & Intelligence Agencies Act, 1996 (Act 526)** now the Security and Intelligence Agencies Act, 2020 (Act 1030)

AIMS

The Act has 7 broad aims.

➤ These are:

1. To bring all existing legislation on labour into conformity with the Constitution of the Republic of Ghana.

* For example, even though the 1992 Constitution provides in Article 21 (1) (e) that: *“All persons shall have the right to freedom of association, which shall include freedom to form and join trade unions or other associations, national or international, for the protection of their interests”*.

* The existing law on trade union virtually creates a monopoly of trade unions in favour of the Ghana Trades Union Congress.

For example under the current labour practice, the Collective Bargaining Certificate to enable any group of workers to enter into collective bargaining is applied for through the TUC, literally mandating every group of employees to be part of the TUC.

- ▶ This monopoly of trade unions in favour of the TUC is of course contrary to the 1992 Constitution and the Conventions of the ILO (Convention 87-Freedom of Association, Convention 98-Collective Bargaining).

For this reason, Part II of the Act, i.e. Sections 79 to 95 provides for freedom of association, formation of trade unions and employers organisations.

By the same token, employers have the right and freedom to organise. Section 80 (2) provides that two or more employers in the same industry or trade, each of whom employs not less than 15 workers may form or join an employers organisation.

2. To bring all the existing legislation on labour into conformity with the several International Labour Organisation conventions to which Ghana is a signatory.

Ghana became a member of the International Labour Organisation on 13th May, 1957, and has so far ratified some 45 Conventions of the ILO. Ghana is therefore duty bound to bring its laws in conformity with the provisions of the conventions of the ILO.

3. To provide a more user-friendly legislation in language and content.
4. To decriminalise some industrial and labour issues. e.g. *S.104 of the Act*

- 5) To provide a more responsive and flexible legal regime that will allow a proactive treatment and resolution of labour issues and disputes.
- ❑ The Act aspires to achieve in the above aims a harmonious socio-economic and political climate in which labour and capital should operate.
 - ❑ This is because the legislators are convinced that the socio-economic and political climate in which we live today are different from the conditions prevailing at the time that most of the existing legislation came into force.
 - ❑ Indeed, most of the laws on labour are nearly 50 years old if not more. And in any case, Ghana has long moved away from the ideals of a socialist type of economy and is now operating a free market system in which the private sector is supposed to be the major player in the economy.

6. To bring within the Act, good practices which have developed over the years outside the existing law so as to give legal basis for these practices. Creates room for the operation of the:

- * National Tripartite Committee under Sections 112-115. The NTC is known in Ghana when it comes to fixing of the daily minimum wage
- * Casual Worker under Sections 73-78
- * Guidelines on Unionization under Sections 79-115

7. To rationalise government's role as policy maker as well as an employer.
- ❑ Government is a major employer irrespective of the various divestiture of state-owned organisations over the years.
 - ❑ The result is that the state has been interested in labour issues not only as the umpire between employers and employees but also as an interested party as an employer.
 - ❑ It is partly to create a new umpire between employees and employers including the state that the Act has established the National Labour Commission in Part 18 of the Act.

STRUCTURE OF ACT 651

The Act has:

- 20 Parts
- 179 Sections and 4 Schedules
- Interpretation (Definitions)
- 69 Pages

INNOVATIONS

1. Registration & Licensing of Private Employment Agencies under Section 2.
2. Protection of Employment under Sections 8-19
 - Rights & Duties of Employer & Worker
 - Contract of Employment
3. Employment of Women, Young Persons & Persons With Disability (PWD) under Sections 45-57
 - Incentives for employing PWD

INNOVATIONS (Cont'd)

4. Maternity Leave arrangements
5. Redundancy
6. Unionisation & Certification
7. Part XVIII: Establishment of the National Labour Commission
8. Section 160: Strikes & Lockouts under Section 160
9. Section 162: Essential Services under Section 162 and also Regulation 20 of L.I. 1833

CHALLENGES

- Management of the potential multiplicity of workplace unions.
- The issue of the classes of workers who should be unionised and who should not be handled with candour.
- Operationalizing the institutions especially :

National Labour Commission;

Labour Department;

National Tripartite Committee;

Private Employment Centers



CHALLENGES (cont'd)

- Need for all stakeholders to accept and embrace change.
- Determination of Essential Services at the National and Enterprise levels
- Need to sensitise all stakeholders
- Need to offer protection for workers in the informal sector.
- Position of payment of remuneration during legal strike or lockout
- The principle of matching remuneration with productivity

CONCLUSION

The idea of the current Labour Act 2003, Act 651 is aimed at inaugurating a new era of a harmonious industrial relations front in Ghana. This was, employers and workers would work together for the common good of all.

Following two decades of operationalization, Act 651 is currently undergoing a review so as to position the law to meet up with current trends.