FREQUENTLY ASKED QUESTIONS

Question: Whose roles is it to ensure that workers' health and safety is given a priority at any given workplace?

Answer: Workplace health and safety is a collective responsibility for all stakeholders (the government, employer and employees). The workers are encouraged to elect the Health and Safety Representatives as provided for by the Labour Act 2007, Act No. 11 of 2007, as these are usually in better position of detecting and reacting to early warning signs before occurrence of accidents. Similarly, employer are urged to honour their duties as stipulated by the same Act.

Question: Is there a National Pension Fund for employees who do not have pension benefits from their employers?

Answer: There is no law at the moment that compel employers to offer pension benefits to their employees. The Ministry would like to see employees having decent and safe working environment. Therefore, it is currently in consultation with the Social Security Commission on the establishment of the National Pension Fund.

Question: What is the process of handling labour cases?

Answer: The process of lodging a case starts with the submission of the prescribed **Referral of Dispute Form LC 21**, accompanied by a Summary of Dispute (write-up of what happened) and **Proof of Service-Form LG 36).** After the Referral Documents are screened by the Labour Commissioner, a conciliator/arbitrator is designated a particular case, depending on the type of dispute (i.e. dispute of right or dispute of interest). A Notice of not less than 14 days for the first hearing of the dispute is then issued. The designated conciliator/arbitrator may resolve the case in 30 days (if possible) or longer as agreed by both parties. If an arbitrator is appointed for a dispute of right, he/she must first try through conciliation to resolve the dispute. If not resolved, then the proceeding continues as an arbitration tribunal with the arbitrator required to issue an award in 30 days after the tribunal proceedings have closed. The award is binding and becomes court order if filed by the affected party or by the Labour Commissioner with the Labour Court. The award can be enforced through labour inspectors by completing **Form LS 30**. An arbitration award can be appealed against or reviewed by Labour Court. If conciliator cannot resolve the dispute of interest, a Certificate of Unresolved Issues is then issued to the parties. The parties may opt for an industrial action (protected strike or lock-out) or any other lawful action.

Question: Do I qualify to get a testimonial from my employer?

Answer: It is important for employers to give their employees testimonials to help justify their working experience as they may indicate when need be. The Labour Act (Act 11 of 2007) indicates in section 37(6) that nothing prevents an employer from furnishing an employee, whose employment has been terminated, with a testimonial or other certificate of good character. In addition, the same section also made a provision for the employers to give a certificate of service to the employee on the termination of employment. Such certificate should state specific particulars such as: the name of the employee, name and address of the employer, a description of the industry, the date of commencement and termination of

employment, employee's job description, remuneration at the date of termination as well as the reason for termination of employment (if the employee requests so).

Question: Is the Ministry of Labour, Industrial Relations and Employment Creation supposed to act like the middleman during a dispute or are to give advice to the company during a labour dispute?

Answer: The role of the Ministry of Labour, Industrial Relations and Employment Creation is to ensure effective labour relations between employers and employees. This Ministry provides advices to both parties and mediates in an event of labour complaints. Depending on the type of dispute registered, a conciliator or arbitrator will be appointed by the Labour Commissioner, to deal with the dispute accordingly. The role of the conciliator is to assist the parties to reach a settlement on their own voluntarily, while an arbitrator decides on the outcome of the case. The arbitrator, based on facts and evidence of the case, makes a final and binding decision.

Question: What are the procedures of working overtime?

Answer: It is unlawful for an employer to require his/her employees to perform unauthorised overtime. In no circumstance that an overtime be performed expect on condition whereby permission is granted by the Minister or the Permanent Secretary of this Ministry. Therefore, an employer who is in need of his/her employees to perform overtime, should forward a request in writing to this Ministry, requesting for authorisation to perform overtime, to which, a consent letter with signatures of all the affected employees should be attached. The approval is granted looking at the validity of reasons provided by the employer for the employees to perform such overtime.

Question: What is the overtime rates for work performed on Sundays?

The Labour Act (Act No.11 of 2007) stipulates in section 21 that an employer must pay an employee who works on Sunday double that employee's hourly basic wage for each hour worked or if the ordinary works is being performed on Sundays, the employer must pay the employee's daily remuneration plus the hourly basic wage for each hour worked.

Question 7: Is it lawful to force employees to sign contract of employment that they don't understand?

Answer: For the sake of developing and maintaining harmonious labour relations between the employers and employers, it is advisable that employers give ample time to their employees to study their contracts of employment before accepting them (signing them). This can help the employees to seek clarifications on the contract, especially on technical terms that they do not need to draw assumptions.

An employment contract is a legal requirement between the employer and the employee. The contract is legally binding on both parties. In the event that the employer forces an employee to sign a contract, it will result in the employee to perform an act he/she would not have normally performed. It is therefore lawful to have the contract, but not to force an employee to sign it. Employment contract signed under duress is not valid and thus may not be enforced. The employee must proof that the employer exerted pressure on him/her in order to induce him/her to enter into a contract.

A well-understood employment of contract is a starting point of a good labour relations. This Ministry is therefore encouraging both employers and employees who may find themselves in the same predicament to liaise with the Ministry and analyse whether their contracts of employment are in line with the provisions of the Labour Act.

Question 8: What is the prescribed working hours?

Answer: The basic conditions of employment as outlined in the Labour Act (Act 11 of 2007) are there to be observed as a law and principles for both employers and employees. If an employer makes his/her employees to work Monday to Monday such as alleged in this instance, an approval of continuous shifts should be obtained from the Minister responsible for labour and each shift may not be longer than nine (9) hours. The employer should first obtain an agreement from the recognised trade union or the affected employees and the declaration from the Minister before allowing his/her employees to perform overtime. The Labour Act makes a provision for an employee to work for not more than nine (9) hours a day if the employee works for five (5) or fewer days in a week **or** eight (8) hours a day if the employee works for five (5) days in a week, which is equivalent to not more than forty five (45) hours per week.

An employee is entitled to overtime pay for work performed on Sundays or public holidays or in excess of the normal working hours. The Labour Act further makes provision for additional remuneration of six (6) % (night allowance) of that employee's hourly basic wage (excluding overtime) for each night hour worked between 20h00 and 07h00.

The employees who are working for five (5) hours continuously have a right for meal interval of at least not more than one (1) hour and not less than 30 minutes. However an employer may shorten the meal interval to not less than 30 minutes provided that all affected employees have agreed and that the employer has submitted a written of such a notice to the Permanent Secretary.