

ENSURING PROTECTION AND RESPECT FOR LABOUR RIGHTS DURING THE COVID-19 PANDEMIC



UGANDA CONSORTIUM ON
CORPORATE ACCOUNTABILITY

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i. INTRODUCTION

The Uganda Consortium on Corporate Accountability (UCCA) commends the government for acting swiftly and putting in place measures and restrictions to respond to the global coronavirus (COVID-19) pandemic and contain its spread to the general public. Uganda registered the first COVID-19 case on March 21st and according to the Ministry of health, the number of confirmed cases currently stands at 79 with 52 recoveries as of April 28th, 2020. Even before confirming the first case, the government had embarked on putting in place measures to manage the pandemic. Further government directives, restrictions and measures were put in place strengthening previous restrictions, to contain the virus and stop mass transmission and infection to the general public. Some of these measures include a stay home order, total lockdown of non-essential services and workplaces including closing all education institutions, hotels, banning public transportation and private transport of non-essential persons among others. These measures whereas well intended, have nonetheless affected a majority of Uganda's working population in both the formal and informal sector. It has become apparent that not all forms of employment of a non-essential nature can be carried out from home.

As so far noted and experienced, there are many companies and organizations whose nature of business requires people going to the office or other production centers and others offering a service to walk in clients. These have been largely affected by the total lockdown leading to a number of them issuing statements re-organizing the nature of contractual relationship with employees or terminating their employment. Broadly, labour relations across the various sectors have become critical areas of concern that need clear guidelines and government intervention to ensure more stringent protective measures for both the stressed companies and their workers. The Minister of trade reported that from the time of instituting a national lockdown about 4200 companies have shutdown. The extent of this shut down is immense factoring in lost revenue and taxation but most critical the number of people losing employment. It is now more critical that the government comes up with clear economic response plans to support stressed businesses and ensure employee retentions amidst the global pandemic broader impacts in both the health and economic sectors.

Accordingly, UCCA, a civil society consortium on corporate accountability aimed at enhancing accountability by corporations, states, international finance institutions and development partners for violations or abuses of economic, social and cultural Rights (ESCRs) would like to put forward the following proposals detailing the Government obligation to protect labour rights, and to ensure that Companies respect labour rights during the COVID-19 pandemic. Specifically, the UCCA puts forward these 3 Key Recommendations;

Key Recommendations;

- 1. The Government should monitor and ensure respect for human rights especially labour rights amidst the ongoing COVID-19 pandemic containment restrictions and measures. All business sectors' internal measures undertaken during this pandemic must be legal as per the labour rights policy and legislative frameworks.*
- 2. The Government should speed up economic response measures to support and stimulate businesses especially SMEs. This will ensure that key businesses remain afloat and can in the interim maintain their employees as the economic situation improves and businesses normalize.*
- 3. Business Enterprises should come up with internal operating initiatives and strategies that conform to the recently published Ministry of Gender, Labour and Social Development Guidelines, advancing respect for labour rights and enhancing social and economic protection of their employees.*

ii. THE STATE OBLIGATION TO PROTECT LABOUR RIGHTS

It has been over a month since government issued directives, restrictions and measures in response to the pandemic. The pandemic not only poses a serious health threat but has also negatively impacted the labour sector and enforcement of contractual relations.

It is prudent that at such times, the Government is reminded of its core obligation to protect the human rights of all people and ensure that non-state actors including business enterprises respect labour rights.

The Ugandan Constitution enjoins the state to pursue social and economic objectives which fulfill the fundamental rights of all Ugandans to social justice and economic development. In particular to ensure that all development efforts are directed at ensuring the maximum social and cultural wellbeing of the people. The government shutdown of non-essential services has greatly affected peoples' work lifestyle and businesses and by extension Labour relations.

It is critical that government interventions to contain the pandemic are cognizant of the economic stress they put on businesses and general welfare of the citizens.

Whereas some businesses are threatened with imminent closure due to non-operation during this crisis, others especially those categorized as essential services remain in operation. The government should monitor and track the impact that COVID-19 measures have on the business enterprises and come up with economic responses and guidelines to support and stimulate stressed businesses. This would protect employees at the risk of losing employment whilst keeping the businesses afloat. In the interim, the state needs to put in place a clear economic strategy to enable some companies keep in operation and minimize workers lay-offs. This may target SMEs by providing flexible lines of credit or giving tax breaks that enable them to at least continue running the business and pay salaries. Most importantly, government should monitor corporate entities to ensure that people do not unfairly lose jobs or salaries under the guise of the pandemic stress.



iii. THE CORPORATE RESPONSIBILITY TO RESPECT LABOUR RIGHTS: THE DO'S AND DON'TS OF BUSINESSES ENTITIES

With regard to employment, the Ministry of Health and Ministry of Gender, Labour and Social Development (MoGLSD) have issued guidelines and regulations that are instructive to workplaces and employers. These comprise measures that affect the ordinary way of work in terms of location, time and work methods among others. The MoGLSD Guidelines on the negative effects of COVID-19 on company revenues and wage payment among others, advised against termination of employees as this would occasion more costs in terminal benefits.

The Ministry noted that for better technical guidance, and in compliance with Section 19 of the Employment Act, all employers are required to provide returns and statistics on the number of workers likely to be affected. The guidelines further reinforce that

any employee lay-offs should be in accordance with collective bargaining agreements or section 84 of the Employment Act as a temporary measure which should not break the continuity of service of employment.

This brief provides guidance to businesses that have remained operational during the pandemic and those that are closed respectively;

CATEGORY ONE: Businesses Still in Operation During the Lockdown

Essential service providers are still in operation despite the COVID-19 lockdown. These include, the health service sector, banking sector, taxation bodies, telecommunication sector, water and sewerage corporation, electricity, supermarkets and other local market services, manufacturing and production, construction and infrastructure development among others. Henceforth, some of these sector workers are at the frontline and require more care in the fight against the pandemic.

Some of the critical issues that need be addressed to protect workers against the spread of the pandemic include:

1. **Occupational Safety and Health:** Ordinarily, the Occupational Safety and Health Act 2006 places an obligation on employers to take reasonable care to maintain a safe and healthy workplace for their employees. Indeed, in the face of COVID-19, their duty has been re-emphasized with additional obligations to employers to enlighten their employees about the danger of COVID-19, to notify medical authorities in case an employee has symptoms of COVID-19, ensure social distancing at the place of work, conduct temperature checks at the workplace, provide protective equipment like face masks and sanitizers or water and soap at the work stations and to reasonably accommodate the employees at the workplace during the lockdown period.¹

¹ The Public Health (Control of Covid-19) Rules 2020 SI No.52 of 2020

Working from home (WFH):

For workplaces that can adopt the working from home model, it is advisable as it is in line with the directives on combatting the spread of COVID-19. However, this measure ought to comply with employment laws and not result into loss of labour rights like salary, working hours, weekly rests, overtime pay among others. Furthermore, in the event that technological means are required such as internet, this should not pass a cost onto the employees, the employer should be able to support their workers to undertake their tasks at the company cost.

Where the employee is diagnosed with COVID-19 or another sickness and is unable to work, they are entitled to a paid sick leave under Section 84 of the Employment Act 2006. The section provides that; An employee's continuous service shall not be regarded as broken where an employee is absent from work due to his or her taking annual leave, study or education leave, maternity leave or sick leave.

2. **Workers Compensation:** A number of essential service providers are at the frontline of the fight against the COVID-19 pandemic. In this line of duty many are exposed to various injuries and disease. Section 3 of the Workers Compensation Act provides for compensation for injuries suffered and scheduled diseases sustained in the course of and out of employment.

All business enterprises and medical insurance cover should expand their medical coverage and offer treatment and compensation of all COVID-19 related injuries and disease.

3. **Wages:** Since the businesses under this category are still operational during the lockdown, the employers ought to fulfill their obligation to pay wages under the Employment Act 2006 since performance of the contract of service is still possible by the employees.
4. **Transportation to and from Work:** Due to the ban on public transportation and limiting driving of private vehicles, such companies in coordination with the COVID-19 Response Taskforce and other responsible agencies should organize ways of safely transporting their workers to and from work and in compliance with the Ministry of Health guidelines and restrictions.

CATEGORY TWO: Businesses Closed During the Lockdown

Section 40(1) of the Employment Act is to the effect that every employer shall provide his or her employee with work in accordance with the contract of service. However, Subsection 2 of Article 40 provides that that duty shall not apply if the contract is frustrated or its performance is suspended.

With the distinction between essential and non-essential services, businesses providing the latter are facing a total shut down and in effect one can say some of these contracts of service may be frustrated. With the extension of the lockdown for another 21 days, economic stress is inevitable. We continue to see a number of businesses totally shut down and employer-employee contractual relations frustrated. There have been a number of companies that have been forced to terminate contracts of some of their workers.

It is imperative that businesses do not use the pandemic and the lockdown as a way to unlawfully terminate workers' employment relations.

We advise that employers and employees negotiate ways of conduct in such hard terms and agree on a way forward that respects the labour rights of all workers keeping in mind the impediments faced by the business in times like these. The discussions should leave open possible work opportunities as and when the lockdown is over and the company is open to resume business.

Below are some of the options employers struggling with the economic stress can adopt during this covid-19 pandemic:

1. **WFH and Teleworking:** With the Stay home and stay safe government directive, some businesses may explore a work from home structure. Whereas this mode of work is not suitable for all types of jobs or even positions, it is a way of maintaining staff engaged in some desktop work that will help clear up all pending works that may not require in person services to clients. Businesses that are able to should explore teleworking as a mode of retaining their key staff and keeping them engaged in work instead of terminating their contractual relations. However, as noted above, the employers should ensure that the staff have all the necessary tools and training to undertake the expected tasks. Where an employee needs a laptop, internet services and training to access and use set out tools like Skype, Zoom and other Teleworking platforms, the employer should offer such training to their staff.
2. **Annual Paid Leave:** Employers may negotiate with their employees to take their accrued leave in order to prevent the eventuality of having employees take leave shortly after the lockdown period. It ought to be noted that this leave is a paid one. The major benefit it gives the employer is that after the lockdown, the employees will be available fully to perform their duties which might boost the productivity and compensate for the lockdown period.
3. **Unpaid Leave:** With the lockdown and no work being done, it might economically stress some employers to continue paying their employees. Unpaid leave is an option. The Industrial Court has guided that unpaid leave whilst not explicitly provided for in the Employment Act, is a possible consensual arrangement depending on the circumstances as long as the employee expressly agrees to it.²

The advantage with this arrangement as opposed to options such as termination is that there is job security and the employees' continuity of employment is guaranteed. However, it is critical that the employer gets express consent of the employees before rolling out the unpaid leave option.

4. **Temporary Lay-offs:** Under section 84(1)(c) of the Employment Act 2006, employers can consider temporary layoff of staff if they cannot maintain them during this COVID-19 period. For employees who belong to labour unions, employers should also ensure that they are following the requirements of collective bargaining agreements. For non-unionized employees, employers should consider the employment contracts. However, there is a potential risk that a temporary layoff of a non-unionized employee may amount to a constructive dismissal in the absence of an express or implied contractual term or consent. While temporary layoff if implemented might affect employee benefits during the period of layoff, it does not affect continuity of service in accordance with Section 84 of the Employment Act 2006.

² *Byanju Vs Board of Governors St. Augustine College Wakiso Labour Dispute No.062 of 2016*

5. **Restructuring/ Collective Termination:** In the worst case scenario where the employer suffers economic stress as a result of the COVID-19 pandemic, they might explore the option to terminate their employees in accordance with Section 81 of the Employment Act. It allows in limited circumstances the termination of more than 10 employees' contracts within a three-month period. This option should be considered as a last resort because of the modalities involved in selection of the employees to be terminated, notification requirements, the obligation to pay accrued salary arrears, payment in lieu of notice depending on the time the employee has been in the employer's service and other contractual employee benefits to which they would be entitled to.

In Conclusion, the COVID-19 (and the lockdown) will have far-reaching implications on the labour relations in Uganda, even after its total containment. As such, the UCCA recommends:

1. The government should come up with an economic response strategy that protects employees and supports stressed businesses.
2. Businesses should take utmost care to comply with the relevant laws and guidelines issued by the state in dealing their employees during and after the pandemic.
3. Lastly all propositions and guidelines should go beyond the legal framework and extend to corporate social responsibility. Now more than ever, businesses should be prepared to give back to their community starting with their employees. This can be done through coming up with clear internal initiatives and strategies that maintain their employees' security of job and extending to communities in which they operate.



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