A guide to the Labour Law for MSMEs in Construction

Increasing productivity through improved labour law compliance and working conditions

Ministry of Labour and Social Security

( May 2015 )
ACKNOWLEDGEMENT

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This work would not have been possible without the inputs made by the LGN II Project sub-committee, consisting of the Ministry of Labour and Social Security; the National Association of Medium- and Small-Scale Contractors; the Zambia Association of Women in Construction; the Association for Building and Civil Engineering Contractors; the National Union for Building and Engineering General Workers; the National Pension Scheme Authority; the Workers’ Compensation Fund Control Board; and the Social Protection and Occupational Safety and Health components of the Zambia Green Jobs Programme. The oversight provided by and validation of the LGN II (Closure) Steering Committee was also invaluable.

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Globally, Micro, Small, Medium Enterprises (MSMEs) have become engines for economic growth, job creation and poverty reduction. In Zambia, the building and construction sector is one with high potential for the creation of employment through MSME activity. This sector, which currently makes up 21.1% of the economy, has experienced rapid growth in recent years, and is expected to expand further due to public sector funded infrastructure development projects and strong demand in the residential housing and office retail market. As the construction sector continues to deliver as one of the main enablers of national economic growth, it is of critical importance that it equally contributes to the generation of decent jobs for Zambians in order to fully achieve its potential to deliver broad based wealth.

To this end, a culture of the respect for the rule of labour laws by both employers and workers must be firmly ingrained in the sector. Compliance with labour laws not only enhances working conditions for workers but also contributes to productivity and ultimately the competitiveness of the enterprise. Facilitating good working conditions through labour law compliance, therefore, is an investment in a more productive workforce that will directly impact the performance of the business.

To give a few examples of this, formalised employment relationships can provide the clarity, predictability and security that construction workers need to commit themselves fully to the job. Further, the creation of a safe working environment for workers helps to prevent the devastating effect of fatalities, injury and disease not only on affected workers and their families, but also on the business and economy in an industry where industrial accidents and risk of injury are inherent in the nature of work. Subscribing to social security schemes further mitigates risk for worker and employer alike against the cost of injury, as well as assuring a minimum level of wellbeing.

On all of these aspects and many others that contribute to improved business performance for MSMEs, labour laws provide an enabling regulatory framework.

The Ministry of Labour and Social Security commends the work of the International Labour Organization, supported by the Norwegian Agency for Development Cooperation through Law-Growth Nexus project in promoting the uptake of labour laws by construction MSME through creating awareness of the business case for complying with labour laws to MSMEs. This complements the work of the Ministry in enforcing labour laws.

This booklet adopts an innovative approach to guiding businesses on how to comply with labour laws by collapsing all relevant labour regulations related to key aspects of the employment relationship. Summarising labour laws by topic therefore makes it easy for MSME owners to find a comprehensive statement of the labour law on specific issues. It is our hope that this guide to labour laws for MSMEs in construction will go a long way in providing clarity on how to comply with labour laws, thereby assisting the sector to generate more and better jobs.

Honourable Fackson U. Shamenda, MP
Minister of Labour and Social Security
### ABBREVIATIONS AND ACRONYMS

<table>
<thead>
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<th>Abbreviation</th>
<th>Description</th>
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<tr>
<td>ADRMs</td>
<td>Alternative Dispute Resolutions Mechanisms</td>
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<td>CSO</td>
<td>Central Statistical Office</td>
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<td>DWCP</td>
<td>Decent Work Country Programme</td>
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<td>ILO</td>
<td>International Labour Organization</td>
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<td>ILRs</td>
<td>International Labour Standards</td>
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<td>Industrial and Labour Relations Act</td>
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<td>IRC</td>
<td>Industrial Relations Court</td>
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<td>LASF</td>
<td>Local Authority Superannuation Fund</td>
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<td>LIZ</td>
<td>Labour Institute of Zambia</td>
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<td>LFS</td>
<td>Labour Force Survey</td>
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<td>MLSS</td>
<td>Ministry of Labour and Social Security</td>
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<td>MSMEs</td>
<td>Micro, Medium and Small Scale Enterprises</td>
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<td>MWCE</td>
<td>Minimum Wages and Conditions of Employment</td>
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<td>NAPSA</td>
<td>National Pension Scheme Authority</td>
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<td>NCC</td>
<td>National Council for Construction</td>
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<td>OHS</td>
<td>Occupational Health and Safety</td>
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<td>PSPF</td>
<td>Public Service pension Fund</td>
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<td>SI</td>
<td>Statutory Instrument</td>
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<td>TCLC</td>
<td>Tripartite Consultative Labour Council</td>
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<td>ZCTU</td>
<td>Zambia Congress of Trade Unions</td>
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<td>ZFE</td>
<td>Zambia Federation of Employers</td>
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<tr>
<td>ZIHR</td>
<td>Zambia Institute of Human Resource</td>
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<td>ZNPF</td>
<td>Zambia National Provident Fund</td>
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<tr>
<td>ZRA</td>
<td>Zambia Revenue Authority</td>
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<tr>
<td>WCFCB</td>
<td>Workers’ Compensation Fund Control Board</td>
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CHAPTER 1

INTRODUCTION

1.1 Purpose of the booklet

The purpose of this booklet is to promote labour law awareness among Micro-, Small- and Medium Enterprises (MSMEs) in the construction sector. This easy-to-use booklet is a simplified version of the Zambian labour laws arranged by topic to enable users to access guidance on how to comply with labour law provisions that they may need with ease. By complying with the legal and regulatory framework, MSMEs can foster good working conditions. Facilitating good working conditions is in turn an investment in a more productive workforce, leading to enhanced competitiveness and productivity of the enterprise and as a consequence improves the business.

1.2 Disclaimer

In case of gaps and conflicts in the law, a summary box has been provided to suggest to readers on how best to remain within the limits of the law. However, this summary of the Zambian labour statutes does not supersede the law. As such, it should not be used as a substitute for the labour law, but as a mere guide. In case of doubt, specific legislations should be consulted for clarification and correct interpretation.

The rates and monetary figures used in this booklet are subject to change from time to time and should be verified with the relevant institution, whether the National Pension Scheme Authority (NAPSA), the Zambia Revenue Authority (ZRA), the Workers Compensation Fund Control Board (WCFCB) or the Ministry of Labour and Social Security (MLSS).
CHAPTER 2

WHICH LAWS AND INSTITUTIONS GOVERN THE ZAMBIAN LABOUR MARKET?

2.1 Categories of the labour statutes
The laws regulating labour in Zambia may be grouped in nine (9) categories as follows:

1. Republican Constitution, Cap 1 of the Laws of Zambia
   The following work-related rights for all citizens (meaning they apply equally to employers and workers) are protected under the Republican Constitution:
   a) Protection from forced labour (Article 14);
   b) Protection from property being taken away (Article 16);
   c) Protection of freedom of religion or belief. An employer is not allowed to discriminate against any worker on the basis of his/her religion or belief (Article 19);
   d) Protection of freedom of assembly and association (Article 21);
   e) Protection from discrimination (Article 23);
   f) Protection of young persons from discrimination (Article 24); and
   g) Protection of accrued pension benefits (Article 124).

2. Individual Labour Laws:
   2.1 Employment Act, Cap 268 of the Laws of Zambia
   2.2 Employment Act (Special Provisions), Cap 270 of the Laws of Zambia
   2.3 Minimum Wages and Conditions of Employment Act, Cap 276 of the Laws of Zambia SI No. 45 (Domestic Workers) 2012 as read together with SI No. 3 of 2011 SI No. 46 (General Order) 2012 as read together with SI No. 2 of 2011 SI No. 47 (Shop Workers) 2012 as read together with SI No. 1 of 2011

3. The Employment of Young Persons and Children’s Act, Cap 274 of the Laws of Zambia

4. Apprenticeship Act, Cap 275 of the Laws of Zambia

5. Occupational Health and Safety
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   7.3 Public Service Pension Fund (PSPF) Act No. 35 of 1996, Cap 260 of the Laws of Zambia
   7.4 Local Authorities Superannuation (LASF) Act, Cap 284 of the Laws of Zambia
   7.5 Workers’ Compensation (WCFCB) Act No. 10 of 1999, Cap 271 of the Laws of Zambia
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   2.2.4 Industrial Relations Court (IRC)
CHAPTER 3

WHAT IS THE MINIMUM AGE FOR EMPLOYMENT?

3.1 Minimum age for employment
The Employment Act sets the minimum contractual age of employment at fifteen (15) years. However, the Employment of Young Persons and Children Act (EYPCA) gives guidance on the restricted circumstances under which such employment of young persons is legally permissible. For purposes of the EYPCA, a young person is a person aged between fifteen and eighteen years. In specified instances, this minimum age is set at thirteen (13) years.

3.2 Permissible employment of young persons
   
3.2.1 Certain circumstances when the young person is not in school:
   Under special circumstances, the law allows a person under the age of fifteen (15) years to be employed during school vacations provided the individual is receiving full time education at a school recognized as such under the Education Act or a person who has failed to secure admission to a suitable school or whose enrolment has been cancelled or terminated by the school authorities or for good cause by a parent. Such a worker can only be considered as a daily contract worker. Under the Employment Act, any daily contract is deemed to be an oral contract for all intent and purposes. The employment of such workers can only be done under terms, conditions and type of employment approved by a Labour Officer.

3.2.2 Performance of light work:
   Employment of Young Persons and Children’s Act allows the performance of light work by children aged between 13 and 15 provided it is not likely to harm the child’s health or development or prejudice the child’s learning or vocational training. The Act provides for the Minister to issue regulations which define light work.

3.2.3 Employment of Apprentices:
   An apprentice is any person employed under a contract of apprenticeship registered under Section twelve (12) or fourteen (14) of the Apprenticeship Act. The minimum contractual age for the employment of minors under the Apprenticeship Act, Cap
272 is between 15 and 21 years. This Act further sets the parameters for employing apprentices.

### 3.3 Prohibition of employment of young persons and children

#### 3.3.1 Employment in an industrial undertaking

No person shall employ a young person under the age of sixteen (16) years in an industrial undertaking, unless such young person is either-

(a) employed under a contract of apprenticeship entered into under the Apprenticeship Act; or (b) in possession of a certificate signed by a Labour Officer authorising such employment.

#### 3.3.2 Hazardous work

The law prohibits the employment of children in hazardous work which is likely to jeopardise their health, safety or morals. The Minister shall prescribe the types of hazardous work by regulations.

#### 3.3.3 Night work

The law prohibits the employment of young persons in night work except in specific instances as set out in section 9 and 10 of the EYPCA.

#### 3.3.4 Absolute prohibition of worst forms of child labour

The Employment of Young Persons and Children Act prohibit persons under the age of 18 from carrying out worst forms of labour defined as:

i) slavery or practices similar to slavery;

ii) the involvement of children in prostitution and pornography;

iii) the involvement of children in illicit activities such as drug trafficking and

iv) any work that is likely to harm the health, safety or morals of children.
Guidance Note

However, other statutes such as the Juveniles Act and the Penal Code Act prohibit such forms of child labour in relation to children below the age of 16. For the avoidance of doubt, however, contractors are encouraged to comply with age limit of eighteen (18) set out in the Employment of Young Persons and Children Act. Article 24 (1) of the Constitution further states that a person under the age of fifteen (15) years shall not be employed and shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education or interfere with his physical, mental or moral development (although an Act of Parliament may provide for the employment of a young person for a wage under certain conditions.) Special note should be taken by an employer in construction of the prohibition to employ a young person in any work likely to harm the child’s health, given that construction sites can often have dangerous scenarios that can harm one’s health. This provision therefore carries special significance in the construction sector.

3.3.5 Protection of young persons from other forms of exploitation.

Article 24 (1) of the Constitution prescribes further that all young persons shall be protected against physical or mental ill-treatment, all forms of neglect, cruelty or exploitation, and that a young person shall not be the subject of traffic in any form.
CHAPTER 4

WHAT ARE THE DIFFERENT WAYS TO FORMALLY HIRE A WORKER?

4.1 Employment contracts generally
The employment contract or contract of service is any agreement where a person agrees to employ another person as a worker and the other person agrees to serve the employer as an employee. Such an agreement can be made either in writing or verbally to form a legally binding contract.

4.2 Who is an employee?
Section 3 of the Employment Act defines employee as “any person who has entered into or works under a contract of service, whether the contract is express or implied, is oral or in writing, and whether the remuneration is calculated by time or by work done, or is in cash or kind, but does not include a person employed under a contract of apprenticeship made in accordance with the Apprenticeship Act or a casual employee.”

The same section of the Employment Act defines “casual employee” as “any employee the terms of whose employment provide for his payment at the end of each day and who is engaged for a period of not more than six months.” But the Workers’ Compensation Fund Control Board Act of 1999 refers to a worker and not to an employee. It defines a worker as “a person who has entered into, or works under, a contract of service or of apprenticeship or of learnership with an employer, whether the contract is express or implied, is oral or is in writing and whether the remuneration is calculated by time or by work done or is in cash or in kind.” It should be noted that the definition clauses in the Industrial and Labour Relations Act by wider definition regards casual workers as employees whereas the employment act excludes casual workers which gives rise to gaps and implementation challenges.

4.3 Types of employment contracts
There are therefore two types of contracts of employment or contracts of service:
   i) Oral contracts of employment  
   ii) Written contracts of employment

4.4 Oral contracts of employment
Section 17 of the Employment Act states that “all contracts of service, other than contracts which are required by this Act or any other law to be made in writing, may be made orally.”
4.4.1 Record of oral contract

Though an oral contract of employment can be entered into orally and can be terminated orally,

Section 24 of the Employment Act states that every employer shall prepare and maintain at his expense, or cause to be prepared and maintained, a record of contract for every employee employed by him under an oral contract of service. A record of contract shall be in the prescribed form and shall contain the following particulars:

(you may also refer to the oral contract of service provided under Section 4.8 of this booklet):

(a) the name and sex of the employee and his nationality;
(b) the name, address and occupation of the employer;
(c) the date of the employee’s engagement and the capacity in which he is to be employed;
(d) the type of contract;
(e) the place of engagement;
(f) the rate of wages and any additional payments in kind;
(g) the intervals of payment.

4.4.2 Presumption as to new contract

When an oral contract continues after one month, it will be considered that the employer and the worker have entered into a new contract of the same duration and subject to the same terms and condition as those of the contract that has been terminated.

Where an oral contract continues, unless the parties have agreed otherwise, the law will assume that a new contract of the same duration will have come into existence automatically. This is so because the law does not allow for an abrupt termination of contract of employment.

4.5 Contracts of employment which are required to be in writing

Section 28 of the Employment Act states that contracts of employment should be in writing if the following requirements are met:

a) If the contract is made for six months or a period of more than six months
b) If it is a contract of foreign service (for work to be done outside Zambia)
c) If the contract is made to perform some specific work which cannot be completed in less than six months.
4.5.1 Employee’s consent
An employee shall indicate his consent to the contract of service by affixing his/ her signature, or thumb or print in the presence of a person other than the employer who acts as a witness.

4.5.2 Medical examination
Every employee who enters into a contract of service is required to be medically examined by a medical officer. Such examination shall relate to the fitness of the employee to undertake the work which he has been contracted to do, and a medical report shall be sent by the medical officer to the employer. Employers should be aware that forced testing of prospective employees for HIV/AIDS is prohibited under the law as it violates the person’s right to privacy.

4.5.3 Responsibility to write contracts and attestation
An employer has a responsibility to write the contract of employment and ensure that it is attested by a proper officer (i.e. the Labour Commissioner or any Labour Officer) . The proper officer must ensure that the contents of the contract have been read to the employee and that he/she has entered into the contract voluntarily. If the contract of employment is not attested by a proper officer within forty (40) days the employer, following the strict letter of the law, shall cease to have any rights under such a contract.

Further, if an employer willfully fails to present for attestation a written contract of service within 40 days from the making thereof shall be guilty of an offence and liable to a fine of 60 penalty units every day the employer remains in default.

4.5.4 Contents of a written contract
It is a legal requirement that a written contract of service must contain the following:

a) the name of the employer and of the employee;

b) the name of the business or undertaking in which the employee is to be employed;

c) the place of engagement and, where applicable, the place of origin of the employee and any other particulars necessary for his/her identification;

d) the date of commencement and the duration of the contract of service;

e) the place at which, or the geographical limits within which, any work under the contract is to be performed;
f) the wages to be paid and, if applicable, particulars of any food to be provided under the contract or of any cash equivalent of any such food;

g) an undertaking by the employer to pay the wages of the employee monthly or at shorter period, as the case may be, unless deferment of payment is expressly sanctioned in terms of section forty-eight;

h) the nature of the employment, including working hours and tasks where applicable and practical, and the general operations involved and such additional details as may be necessary to make it clear to the employee the nature of the work for which he contracts;

i) in the case of a contract of foreign service or contract of service entered into by an employment agency on behalf of an employer with an employee, an undertaking by the employer or employment agency, as the case may be, to provide the employee with sufficient means of subsistence to proceed to the place of employment and to pay the expenses of repatriating the employees as specified in sub section (2) of section thirteen.

4.6 Rights of female employees

Though both the Republican Constitution and labour statutes affirm the equality of both genders and outlaw discriminatory practices based on sex, female employees are however entitled to gender-specific provisions in some labour legislations such as:

a) Paid maternity leave (see Chapter 8 on leave entitlements).

b) One day of absence with full pay every month without giving reasons. This is commonly referred to as “Mother’s Day” (see Chapter 8 on leave entitlements).

c) Leave with pay to nurse a sick child (see Chapter 8 on leave entitlements).

d) Separate toilet facilities at the workplace (see Chapter 7 on health and safety).

4.7 Categories of employees

Under the labour laws that regulate labour markets in Zambia, an employer may employ any or all of the following categories of workers:

4.7.1 Protected worker – vulnerable and non-unionised workers, including casuals, temporal and seasonal workers who are protected by the Minimum Wages and Conditions of Employment Act.
4.7.2 **Contract worker** – on individual contracts of employment attested by a Proper Labour Officer for compliance with labour laws as stipulated in the Employment Act.

4.7.3 **Unionisable worker** – eligible for union membership and terms and conditions of employment are regulated in the Collective Agreement under provisions of the ILRA. This relationship is protected by a Recognition Agreement.
   a) The threshold for registration of a union by the Ministry of Labour is 50 members
   b) Threshold for recognition of the union by the employer is 25 unionised employees in a company or a lesser number where the Minister of Labour has prescribed a lesser number.
   c) Terms & conditions of employment for unionised employees are negotiated through the collective bargaining process by the bargaining unit which comprises representatives of management and the union(s) in the undertaking.
   d) Collective agreements must include statutory clauses for approval by the Minister. Breach of a provision under an approved collective agreement gives rise to a dispute which can be submitted for conciliation or court determination.

4.7.4 **Management staff** – these are ineligible to join the union under the ILRA. Management staff are defined as heads of department or institution with institutional authority in human resource, operational and financial matters of the undertaking, including the right to hire and fire.

4.7.5 **Essential worker** - Essential workers are required to be issued with a essential service certificate by their employer. Section 107(10) of the ILRA defines an essential worker as one who is engaged in the following essential services such as:
   a) any service relating to the generation, supply or distribution of electricity;
   b) any hospital or medical service;
   c) any service relating to the supply and distribution of water;
   d) any sewerage service;
   e) any fire brigade; or
   f) any service for the maintenance of safe and sound conditions in a mine of-
(i) underground working and drainage;
(ii) shafts and shaft installations; or
(iii) machinery and plant;
g) such other service which the Minister may, in consultation with the Tripartite Consultative Labour Council (TCLC), prescribe by statutory instrument as an essential service (As amended by Act No. 13 of 1994 and Act No.30 of 1997).
### 4.8 Template record of oral contract

**FORM 2 (Regulation 3)**

**THE EMPLOYMENT ACT**

**THE EMPLOYMENT REGULATIONS**

**RECORD OF ORAL CONTRACT OF SERVICE**

1. Name of Employer
2. Address of Employer
3. Employer’s occupation

#### PARTICULARS OF EMPLOYEE

<table>
<thead>
<tr>
<th>Name</th>
<th>Sex</th>
<th>Nationality</th>
<th>Date and place of engagement</th>
<th>Capacity in which employed</th>
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<tr>
<th>Amount of housing allowance where applicable</th>
<th>Type of contract (e.g. daily, weekly, monthly, as the case may be)</th>
<th>Rate of wages (per hour, per week, per day, or per month)</th>
<th>Intervals at which wages are paid</th>
<th>Additional payment in kind (give details here)</th>
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<table>
<thead>
<tr>
<th>Signature of Employer</th>
<th>Signature of Employee</th>
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Notes:

(i) This form must be prepared in duplicate, one copy to be handed to the employee, the other to be retained by the employer;

(ii) Space is provided on the reserve side of the form for subsequent changes in the employee’s conditions of service or rate of pay. The employer must ensure that all such changes are duly recorded on both copies of the record.

[Reverse]

**Details of Changes in Employee’s Conditions of Service or Rate of Pay**

<table>
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<tr>
<th>Effective date</th>
<th>Type of contract</th>
<th>Rate of wages</th>
<th>Additional payment in kind (give details)</th>
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(As amended by S.I. No. 136 of 1981)
CHAPTER 5

THE STATUS OF TRADE UNIONS AND EMPLOYERS’ ASSOCIATIONS

5.1 Freedom of Association
Freedom of association, that is the right to belong to an association or a trade union of one’s own choosing, is a fundamental human right which is guaranteed under the Republican Constitution, the Industrial and Labour Relations Act (ILRA).

Workers and employers alike are allowed to belong to a workers’ organization or an employers’ association or federation respectively, for purposes of promoting their respective interests. The ILRA sets the minimum number of members required for the registration of trade unions at fifty (50) and employers’ organizations at five (5).

5.2 Rights of employees
Part II, Section 5 of the Industrial and Labour Relations Act gives an employee the following rights:

a) the right to take part in the formation of a trade union;
b) the right to be a member of a trade union of that employee’s choice;
c) the right, at any appropriate time, to take part in the activities of a trade union including any activities as, or with a view to becoming, an officer of the trade union, seeking election or accepting appointment, and if so elected or appointed, to hold office as such officer subject only to the constitution of the trade union concerned;
d) the right to obtain leave of absence from work in the exercise of the rights provided for in paragraph (c) and the leave applied for shall not be unreasonably withheld by the employer;
e) the right not to be prevented, dismissed, penalised, victimised or discriminated against or deterred from exercising the rights conferred on the employee under this Act;
f) the right of any employee not to be a member of a trade union or to be required to relinquish membership;
g) the right not to be dismissed, victimised or prejudiced for exercising or for the anticipated exercise of any right recognised by this Act or any other law relating to employment; or for participating in any proceedings relating thereto;
h) the right not to do work normally done by an employee who is lawfully on strike or who is locked out, unless such work constitutes an essential service, or if on request the employee voluntarily waives the right specified under this Act;
   i) the right not to be dismissed, penalised or disciplined on the
grounds that the employee:
(i) has been or is a complainant or witness or has given evidence in any proceedings, whether instituted against the employer before the Court or any other court; or
(ii) is entitled to a reward, benefit or compensation against any employers, organisation or class of employers to which the employer of that employee belongs or against any other person, in consequence of a decision made by a court in favour of that employee or in favour of a trade union or class of employees to which the employee belongs.

(2) Any employee who has reasonable cause to believe that the employee’s services have, or employment has, been terminated or that the employee has suffered any penalty, disadvantage or victimisation for exercising or in connection with the exercise of any rights specified under this section may-
   a) within thirty (30) days after exhausting administrative channels available to that employee in the employing undertaking; or
   b) where administrative channels are not available, within thirty days of that termination of services or employment, or of knowing that the employee has suffered any penalty, disadvantage or victimisation, lay a complaint before the Court.

(3) The Court shall, if it finds in favour of the complainant-
   a) grant to the complainant damages or compensation for loss of employment;
   b) make an order for re-employment or re-instatement; or
   c) make such other order as it may consider appropriate in the circumstances.

5.3 Rights of employers
According Section 37 (1) of the Employment Act, employers have the following rights:
   a) Employers shall have the right to participate in the formation of, and to join, an association and to participate in the lawful activities of such employers’ organisation;
   b) Nothing contained in any law shall prohibit any employer from being or becoming a member of any employers’ organisation lawfully in being or subject the employer to any penalty by reason of the employers’ membership of any such employers’ organisation;
   c) no person shall impede, interfere with, or coerce, an employer in the exercise of his rights under this Act;
   d) no person shall subject an employer to any form of discrimination on the ground that the employer is or is not a member of any
employers’ organisation;
e) no person shall subject another person to any form of discrimination on the ground that the person holds office in an association; and
f) no person shall impede or interfere with the lawful establishment administration or functioning of an employers’ organization.

5.4 Duty to enter into recognition agreement
The rights associated with freedom of association are conferred upon registered unions only. Trade unions and employers’ organizations are obliged to register with the Labour Commissioner within six (6) months of formation.

• Section 63 (1) of the ILRA states that every employer employing twenty-five (25) or more eligible employees, or such lesser number as may be prescribed by the Minister, shall register himself with the Commissioner within a period not exceeding three (3) months from the date of coming into operation of this section or, from the date upon which this section becomes applicable to the employer, as the case may be.

• Not later than three months from the date of registration under section sixty-three a registered employer and a trade union, if any, to which the employees belong, shall enter into a recognition agreement.

• Not later than three months from the date of issue of a certificate of registration, an employers’ organisation and trade union to which the employees belong, shall enter into a recognition agreement (Section 63 (1-2) of the ILRA).

5.4.1 Essentials of a recognition agreement (Section 65 of ILRA)
(1) Every recognition agreement shall be in writing, signed by the representatives of the parties to it and shall provide:

a) that the employer or employers’ organisation, as the case may be, has recognised the trade union as representative of, and bargaining agent for, the eligible employees represented by the trade union so recognised for the purpose of regulating relations between the employer or employers’ organisation and the trade union;

b) for the rules relating to grievances and bargaining procedures;

c) for the methods, procedures and rules under which the agreement may be reviewed, amended, replaced or terminated.
(2) Three copies of a recognition agreement and of any alterations to the agreement shall be delivered to the Commissioner by the parties to the agreement.

(3) The Commissioner may, if satisfied that all the conditions of the recognition agreement have been met, register the agreement and shall return a copy each to the parties concerned (As amended by Act No.30 of 1997).

5.5 Collective Agreements (Section 66 (1) of the ILRA)

1. Within three (3) months from the date registration of the recognition agreement the employer or employers’ organisation, as the case may be, and the trade union, shall enter into collective bargaining for the purpose of concluding and signing a collective agreement.

2. Collective bargaining may be undertaken:
   (a) At the level of an undertaking, through negotiations between the management of the undertaking and the trade union representing the eligible employees; or
   (b) At the level of an industry, though negotiations between the employers’ organisation and the trade union representing the eligible employees (As repealed and replaced by Act No.30 of 1997).
CHAPTER 6

WHAT STATUTORY PAYMENTS ARE EMPLOYERS OBLIGED TO MAKE?

Every employer is required to make the following statutory payments or contribu-
tions:

i) Salary / wages
ii) Pay-as-you-earn (PAYE) tax contribution
iii) Social security payments:
   a) Workers’ Compensation contributions
   b) NAPSA pension contributions

6.1 MINIMUM WAGE

Most of the workers in MSMEs may not be covered by collective agreements. Con-
sequently, they would fall under the Minimum Wages and Conditions of Employ-
ment Act, General Order 2011 which must be read together with the General Order
of 2012. Minimum Wage is the lowest hourly wage an employer is required to pay
an employee below which the law prohibits. The rate stipulated in the Minimum
Wages and Conditions of Employment (General) Order, 2012 is K700 monthly ba-
sic pay plus allowances. Note that the minimum wage may be adjusted from time
to time by the Minister of Labour and Social Security.

6.1.1 Allowances

In addition to this salary/wage, a protected worker is entitled to the
following allowances:

a) Transport allowance (entitlement for employees whose duty
   station is beyond a three kilometers radius from the area
   of residence): K102.40 per month.

b) Lunch: K120 per month

c) Housing: K210 that is 30% of the basic pay per month *
d) Tools: K64 per month, only for an employee who is required
to provide their own tools to execute the employers’ work.

e) Protective clothing

f) Funeral assistance: When an employee, employees’ spouse
   or child dies, the law obliges the employer to provide a
   coffin, transport to and from the local graveyard and food for the
   funeral or financial assistance to cater for these costs
   (Regulation 13 of the Minimum Wages and Conditions of
   Employment (General) Order).

Taking into account these allowances, the lowest monthly salary an employer can
legally pay to a protected worker is K1,132.40. Note that the figures quoted in this
booklet are as at 2012, MWCEA (General Order) SI No 46. It should be noted that
these figures are subject to change as and when the Minister of Labour and Social
Security issues a new SI. The General Order lists, as Category I protected workers, the following job titles to whom this minimum wage applies:

a) General worker  
b) Cleaner  
c) Handyperson  
d) Office orderly  
e) Guard  
f) Watchperson

The minimum wage for Categories III, IV and V is as follows:

Category III (Driver)  Gross salary K1,525.10, Calculated as follows:  
Basic pay K1,002.38; Housing K300.71; transport K102.40; lunch K120

Category IV: (Typist) Receptionist or Telephonist) Gross salary K 1,633.69,  
Calculated as follows:  
Basic pay K1,085.91; Housing K325.77; transport K102.40; lunch K120

Category V (Qualified Clerk) Gross salary K 2,100.63, Calculated as follows:  
Basic pay K1,445.10; Housing K433.53; transport K102.40; lunch K120

Note that for industry rates for other categories of employees in the construction sector, you may refer to provisions of the Collective Agreement for the construction sector.

6.1.2 Standard working hours and overtime pay
Zambia has an eight (8) hours working day and a maximum forty-five (45) hours regular working week. Any work done in excess of these provisions attracts overtime pay at one-and-a-half during working days and at double rate during Sundays and public holidays.

6.2 PAY AS YOU EARN (PAYE) TAX
Pay As You Earn (PAYE) is a method of deducting tax from employees’ emoluments (total earnings) in proportion to what they earn. Under this system, the employer is empowered to:

a) Calculate tax payable by every employee (including casuals and daily paid workers)  
b) Deduct tax due from the emoluments, and  
c) Remit tax deducted to the Zambia Revenue Authority (ZRA)
6.2.1 PAYE Tax Bands

Workers earning less than K3,000.00 are exempted from paying PAYE tax. Employees earning more than K3,001.00 are liable to PAYE tax using the following tax bands:

<table>
<thead>
<tr>
<th>Income Band</th>
<th>Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>K 0 – K 3,000 taxed @</td>
<td>0%</td>
</tr>
<tr>
<td>K 3,001 – K 3,800 taxed @</td>
<td>25%</td>
</tr>
<tr>
<td>K 3,801 – K 5,900 taxed @</td>
<td>30%</td>
</tr>
<tr>
<td>Above K 5,900 taxed @</td>
<td>35%</td>
</tr>
</tbody>
</table>

Note that these figures are taken from the 2014 Budget Address by Hon. Alexander B. Chikwanda, Minister of Finance, delivered to the National Assembly on Friday 11th October, 2013.

Late remittance of PAYE tax to ZRA attracts a 5% penalty plus interest at 2% above the Bank of Zambia (BoZ) discount rate.

6.2.2 What income and allowances are taxable under PAYE?
1. Wages
2. Salary
3. Overtime pay
4. Leave pay
5. Commissions
6. Fees
7. Bonuses
8. Gratuity
9. Utility allowances (electricity, water, telephone, transport)
10. Rent allowance
11. School fees
12. Professional association fees
13. Club membership fees

6.2.3 What income and allowances are exempted from tax under PAYE system?
1. Pension contributions (Maximum K255 or 15% of gross pay)
2. Labour day awards
3. Ex-gratia payments
4. Medical expenses
5. Funeral expenses
6. Canteen expenses
7. Free housing provided by the employer
8. Personal to holder vehicles.

6.3 SOCIAL SECURITY SYSTEMS

6.3.1 What is Social Security?
In Zambia, social security is defined with reference to all social transfers in kind and in cash that are organized by the state or parastatal organisations or agreed upon through collective bargaining processes whose major aim is to provide to provide short and long term benefits in the form of pension, employment injury benefit, sickness and maternity benefits, unemployment benefits and health services.

The three key objectives of social protection are:
   i) To assure a measure of minimum wellbeing by guaranteeing essential goods and services that provide protection against life contingencies for all people
   ii) To adopt proactive strategies and policies to prevent and protect against risk; and
   iii) To promote individual and social potentials and opportunities for poverty reduction and sustainable development.

6.3.2 The Legal framework and Social security systems in Zambia
There are four statutes which provide a regulatory framework for employment based social security in Zambia:
   • National Pension Scheme Act No. 40 of 1996
   • Public Service Pension Act No. 35 of 1996
   • Local Authority Superannuation Fund Act, Cap 284 of the Laws of Zambia
   • Workers Compensation Act No. 10 of 1999.

In this booklet, only two social security schemes namely the National Pension Scheme Authority (NAPSA) and the Workers’ Compensation Fund Control Board (WCFCB) will be elaborated on as these are the ones which are applicable to MSMEs in the construction sector.

6.3.3 NATIONAL PENSION SCHEME AUTHORITY (NAPSA)
The National Pension Scheme is a mandatory social security scheme that provides retirement and other social security benefits to workers in the country. The National Pension Scheme Authority (NAPSA) was established through an Act of Parliament, the National
Pension Scheme Act of 1996. NAPSA’s mandate is to act as the main vehicle for providing retirement and other social security benefits to workers in the country. The main functions of NAPSA are to collect contribution income, invest this income and then distribute benefits when they fall due.

There are four types of income security benefits that are guaranteed under NAPSA pension scheme:

i) Retirement pension (to qualify a member must make 180 contributions)

ii) Invalidity pension (to qualify a member must make 60 contributions)

iii) Survivors pension; and

iv) Funeral grant

Members who fail to meet these criteria are paid a lump sum consisting of their indexed contributions and interest.

1. Employer’s responsibilities

Every employer has the responsibility to:

• Register all eligible workers with the Scheme
• Deduct and pay contributions to NAPSA:
• Every employer is required to remit to NAPSA 10% of an employees’ monthly gross earnings (i.e. the employee contributes 5% and the employer contributes 5% making the 10% total contribution).
• The contributions can be broken down by weekly or fortnightly remittances
• Provide information in support of contribution payments
• Keep proper records relating to employees’ earnings and personal data; and
• Notify NAPSA of change in location, status of operations i.e. cessation/suspension of business

2. NAPSA is mandated to prosecute defaulting employers

• It is an offence for the employer to fail to do any of the above responsibilities in point 1.
• Any outstanding remittances to NAPSA attract a cumulative 20% penalty fee.
• The penalty acts as compensation for the lost investment earnings and as a deterrent measure against would-be defaulters.

NAPSA Ceiling as at January 2015

New NAPSA Ceiling is K15,926.00.
The maximum an employee or employer will contribute per month @ 5% of an employees’ monthly gross earnings this year is K796.30

3. Which employers are eligible for NAPSA registration?
   It is important to state that among all employers and employees, there are those that are not eligible to be registered with NAPSA. Therefore, registration with NAPSA only affects those employers and employees that are eligible. The following employers are eligible to register with NAPSA:

   (i) The government of the Republic of Zambia, Local Authorities, or parastatals or statutory bodies;
   (ii) Individuals and Households employing domestic servants or casual workers;
   (iii) Non-Governmental Organizations, foreign missions and international organizations employing Zambian citizens;
   (iv) Other employers include SMEs Projects, multinational organizations, and;
   (v) Any other person, association, institution or firm with a contract of service with an eligible employee, and is responsible for paying the employee’s wages.

4. When should an employer register?
   4.1 According to the NPSA Act, an employer should register with NAPSA within one (1) month of commencing business or employing an eligible employee.
   4.2 Registration of employer enables the creation of an employer account number by which an employer is identified. The contributions are deposited to the same account whenever employers make payments.

5. Which category of employees should be registered with NAPSA?
   NAPSA is a compulsory scheme for all workers in the country except those who are exempted under the Act as outlined above. The following employees should be registered with NAPSA:
   5.1 Employees engaged on part time basis;
   5.2 Employees on probation or casual basis;
   5.3 Employees engaged on permanent basis;
   5.4 Employees on contract;
   5.5 Domestic workers;
   5.6 Non Zambians engaged by local institutions;
   5.7 Public Service workers who joined the civil service after 1st February, 2000; and
5.8 In all the above types of employees they should be aged between 16 and 55 years of age.

Can an informal economy worker become a member of NAPSA?
• Yes. Even those in the informal sector can contribute to NAPSA. This means house servants and many others in similar circumstances should also be registered.
• In the case of those who are self-employed, you can register yourself as both the employer and employee and contribute for yourself.

6. Which categories of employees are exempted from NAPSA membership?
There are some classes of employees who are exempted from NAPSA membership which include:
6.1 Non Zambians employed by international organizations or those that enjoy diplomatic status.
6.2 All the workers aged 55 years and above are exempted because they are above retirement age according to the prevailing statutory requirement.
6.3 Workers earning below K15.00 are also exempted from NAPSA. In a bid to try and cover every worker, Pay As You Earn tax exemptions do not affect NAPSA deductions in any way. This therefore implies that wage levels that are exempted from PAYE, are not exempted from NAPSA for as long as they are above K15.00
6.4 Members of the armed forces are equally exempted, but it should be noted that civilians engaged in the Zambia Air Force, Zambia Army, the Police Service and other related wings of Armed Forces; are eligible members of NAPSA.

7. What benefits does NAPSA pay?
7.1 Retirement Pension / Retirement Lump-sum
7.2 Invalidity Pension / Invalidity Lump-sum
7.3 Survivors Pension / Survivors Lump-sum
7.4 Funeral Grant

8. Eligibility for normal retirement pension
In order to be eligible for a normal retirement pension one must:
Reach the age of 55 years
8.1 Be fully insured (i.e. must have made 180 months of contributions) or meet conditions of the sliding scale.

9. Eligibility for early retirement pension
In order to be eligible for an early retirement pension, the following will apply:
9.1 Reach the age of 50
9.2 Member’s early retirement pension should exceed the minimum
pension applicable at the time of retirement.
9.3 Member must be fully insured

10. Eligibility for invalidity pension
To qualify for invalidity pension, the following will apply:
10.1 Member has not reached pensionable age,
10.2 Member has made less than 180 contributions or 15 years but
at least 60 contributions,
10.3 NAPSA has determined that he/she is disabled through a
competent medical board set up to examine the member in
question.

11. Who are the beneficiaries to a survivors’ pension?
11.1 A Spouse
11.2 Child under age 18yrs
11.3 Child under age 25 in full time education
11.4 Unborn child (child in utero at the time of death of member)
11.5 Child of any age disabled by age 18 and at death of the
member. Where there are no children or spouse(s), the next
of kin will be eligible to receive a survivors’ lump sum.

12. Eligibility for funeral grant
When a member who is duly registered with NAPSA dies, the scheme
will pay out a funeral grant subject to the criteria below:
12.1 Member should have made 12 monthly contributions during the
last 36 months immediately preceding member’s death.
12.2 This benefit does not apply to the death of any other person
who may be related to the registered and contributing member
but to the member himself/herself; unless those other relatives
are also registered and contributing members in their own
personal capacity.

13. What about the money contributed to the Zambia National Provident
Fund (ZNPF)?
NAPSA came into being on 12th February 2000 following the transformation
of the then Zambia National Provident Fund (ZNPF) which had been in
existence since 1966. NAPSA is the official manager of all contributions
made to the ZNPF on a custodial basis and has continued paying benefits
on behalf of ZNPF.
The benefits payable under ZNPF are:
13.1 Age benefit – paid to those who are at least 50 years old and above
13.2 Survivors
13.3 Funeral grant
13.4 Disability- this may be physical or mental
13.5 Emigration
13.6 Home ownership benefit
13.7 Supplementary savings

6.3.4 WORKERS’ COMPENSATION FUND CONTROL BOARD (WFCB)
The Workers’ Compensation Fund Control Board (WFCFB) is a social security institution established by Act No. 10 of the Laws of Zambia, to provide mainly for the:
- establishment and administration of the Fund for compensation of Workers disabled by occupational accidents or diseases;
- payment of compensation to dependents of workers who die as a result of occupational accidents or diseases; and
- payment of contributions to the Fund by employers.

1. Who should register with workers’ compensation?
All eligible employers are required to register with the Workers’ Compensation Fund Control Board (WFCFB) by completing and submitting an Employer Registration Form No. 14 and 15 within fourteen (14) days of commencement of business activities. During the registration process the eligible employer is assessed and the assessment must be paid before the registration process is completed. If you do not register within the stipulated time at commencement of your business, you are still obliged by law to complete the registration form subject to back dating of assessments due to the Board for coverage purposes.

2. Assessments
The registered employer is required to submit, on a date prescribed by Workers’ Compensation Commissioner, a Form 14 comprising the following:
(a) an estimate of earnings in which the employer will indicate the number of employees expected to be employed in that year and their earnings as defined in the Act.
(b) a statement of earnings containing the number of workers that were employed the previous year and their earnings as defined in the Act.
(c) to pay a provisional assessment on his/her anticipated workers’ earning in accordance with the rate prescribed for that particular class of business.

3. Assessment Rates
Assessments are calculated at the rate prescribed for each particular class of business as fixed from time to time by the Minister of Labour and Social Security. The rates of assessments are published in the Government Gazette and can be obtained from the Government Printers or from WFCFB offices. The assessment rate for the building and construction sector is 7.63% of K800 for the period 1st April 2014 to 31st March 2015. Any under or over payment of the provisional
assessment is adjusted after the end of the assessment year when the actual earnings of the workers for the year are known.

4. Who is an employer under WCFCB?
An employer is a person or body of persons, corporate or apprenticeship or learner ship, with a worker, whether or not the contract was entered into before the commencement of the Workers’ Compensation Act.

5. Employers’ obligations
i) Employers except the State are required to register with the Board within 14 days of commencement of business.
ii) Employers are required to declare statements of their workers earnings to the Board annually for assessment purposes.
iii) Employers are required to pay assessments to the Board annually.
iv) Employers must within three days after having gained knowledge of the occurrence of an accident or incident of a disease in respect a worker, report the occurrence to the Workers’ Compensation Commissioner on a prescribed form obtainable from Workers’ Compensation Board offices.
v) Provide and maintain such appliances and services for rendering of first aid to workers in case of any accident as may be prescribed in respect of their trade or business.
vi) Provide transport for the removal of injured workers to a hospital or to their residence.

6. Who is a worker?
In the Act, a ‘worker’ is defined as any person who has entered into or works under a contract of service or of apprenticeship or of learner ship with an employer whether the contract is expressed or implied, is oral or in writing. There is no disqualification by reason of any salary or payment in kind the person may earn.

However, the following are excluded from the definition of a worker:

i) Members of the Defense Force of the Republic of Zambia;
ii) Persons in the Police or Public Service of the Republic of Zambia;
iii) Persons employed casually by an employer and not in connection with the employer’s trade or business;
iv) A member of a Service Commission established under the Service Commissions Act; and
v) Outworkers, e.g. agents.

7. When to claim compensation benefits
Compensation benefits are claimable by an employee or his/her dependents when the employee experiences an
occupational accident or disease which results in:
  i) temporary disability
  ii) permanent disability; or
  iii) death of workers.
Temporal disability refers to the inability of the worker to perform their normal function from the time of the injury to full recovery or the time that the worker is presented to the medical board to assess the disability. Periodical payments are paid during this period. Permanent disability refers to permanent loss of ability to do the work that the worker was previously doing. It may also refer to permanent reduction in ability to do the work that the worker was previously doing. A disability of 10% or less attracts a lump sum while a disability above 10% will attract life pension. Death of a worker means 100% loss and the disability rate is 100%. Survivors benefits are paid under this category.

8. Reporting of accidents
   i). Employers are required to report accidents and diseases within three days of gaining knowledge of the occurrence or receiving the report.
   ii). Accident and disease report forms are available at all Workers Compensation Offices and on the website under Statutory Forms.

9. Calculation of compensation benefits
   i). Compensation benefits are calculated according to loss of earning capacity or degree of disablement suffered by a worker as a result of an occupational accident or disease. The scheme is designed to atone for the loss of earnings capacity and not to replace lost earnings due to the injury or disease.

Assessable earnings = monthly earnings (subject to K800.00 ceiling)
Compensable earnings = assessable earnings x 50%

   ii). According to the present Workers’ Compensation Act, earning capacity means K800 per month or K9,600 per year.
   iii). The Act provides for calculation of benefits subject to 50% of earning capacity.

10. What benefits are claimable for injury & disease?
    i). Medical refunds
    ii). Treatment at local health institutions
    iii). Evacuations
11. Guaranteed Benefits under Workers’ Compensation Fund

(a) Cash Benefits
   i). Life pension
   ii). Lump sum payments
   iii). Widow’s or widower’s pension
   iv) Funeral expenses
   v) Children & guardian allowances
   vii) Commutations of pension
   vi) Part commutation
   vii) Total commutation
   viii) Periodical Payments
   ix) Medical Reimbursement

(b) Non-Cash Benefits
   Workers’ Compensation, in addition to mitigations through Health & safety and life pension, also provides rehabilitation services.

12. How do employers benefit by complying with workers compensation?
   i) The Act makes provision for the payment of compensation to workers who sustain any injury or contract diseases while on duty.
   ii) The employer is protected against civil claims which may be instituted against him/her in the event of worker getting injured except where negligence, breach of duty or other wrongful act or other omission of the worker for whose act or default the employer is responsible.
   iii) A worker who is injured on duty is entitled to the payment of compensation in respect of total disablement, permanent disablement and death. Generally, employers benefit from the payments of assessments because of the collective liability insurance features of the workers’ compensation fund system.
   iv) Due to pooling of contributions, the costs of all claims are shared by all employers.
   v) The Board also helps employers to prevent occupational injuries and diseases in their companies through free health and safety programs.
CHAPTER 7

WHAT ARE THE REGULATIONS REGARDING THE WORK ENVIRONMENT?

The two main acts regulating occupational safety and health (OSH) are the Factories Act and the Occupational Health and Safety Act. Other acts regulating specific aspects of OSH include the Zambia Environmental Management Act (ZEMA) and Pollution Act, the Public Health Act and the Mines and Minerals Act (Mining Regulations), The National Construction Commission (NCC) Act.

Definitions
The definition of “occupational safety and health services” includes:
“(a) a service protecting employees against any health or safety hazard which may arise out of their work or the conditions in which the work is carried on; (b) a service contributing towards the employees’ physical and mental adjustment, to the employees’ adaptation to their work and to their assignment to work for which they are suited; and (c) contributing to the establishment and maintenance of the highest possible degree of physical and mental well-being of the employees”.

7.1 THE OCCUPATIONAL HEALTH AND SAFETY ACT No. 56 OF 2010
The Occupational Health and Safety Act applies to all workplaces. The OSH Act defines a workplace as any place where the employees work or are likely to work.”

7.1.1 Duty of Employer to Establish Health and Safety Committees (Section 11) It is the obligation of the employer who employs ten (10) or more persons to establish a health and safety committee.

7.1.2 Functions of the Health and Safety Committees (Section 13) These include the promotion of cooperation between the employer and the employees in achieving and maintaining health and safe working conditions, sharing information about occupational health, safety and welfare with employers, the investigation and resolution of any matter that may be a risk to the health and safety of employees in the workplace and to formulate, review and disseminate to the employees the standards, rules and procedures relating to health and safety to be carried out at the workplace.

7.1.3 Duties of Employers to Employees (Section 16) Places the duty on the employer to ensure, as far as is reasonably practicable, the health, safety and
welfare of the employers; and to place and maintain an employee in an occupational environment adapted to the employee’s physical, physiological and psychological ability.

7.1.4 Duties of Employees at Workplaces (Section 17)  
The employee at a workplace has a duty to take reasonable care for the employees own health and safety and that of other persons who may be affected by the employee’s acts or omissions at the workplace and to cooperate with the employer or any other person in relation to the duty imposed on the employer or that other person, so far as is necessary to enable that duty or requirement to be performed or complied with.

7.1.5 Duties of Employers and Self – Employed Persons to Persons Other Than Employees (Section 18) This section places the duty to take care of third parties on both the employer and a self – employed person to ensure that third parties are not exposed to risk due to the employers or the actions of a self – employed person.

7.1.6 Duties of Person in Control of Workplace or Plant (Section 19)  
This section places the duty to ensure the safety of the employees at the workplace on the person in control of the workplace.

7.1.7 Prohibition of Dismissal or Victimization of Employee (Section 24)  
This section protects an employee from dismissal or any form of victimization because the employee makes a complaint about a workplace matter that the employee considers is not safe or is a risk to health, or has been a member of a health and safety committee or has been a member of health and safety representative or does anything that assists an authorized officer or gives evidence before court. The section also provides that disclosure under this section is a protected disclosure in terms of the Public Interest Disclosure (protection of Whistle Blowers) Act No. 4 of 2010.

7.1.8 Designation of Occupation Health and Safety Service (Section 30) This section requires an employer or person who intends to employ any number of persons permanently to inform the Director of that fact who shall inform the Minister who in turn may designate the workplace or class of workplaces as one requiring an occupational health safety service.

These regulations specify in details safety and health requirements at work sites covering the following issues:

- Scaffolds and means of access
- Working platforms, working places, gangways etc.
- Lifting machinery
- Hoists
- Lifting tackle and plant
- Excavations, shafts and tunnels
- Demolition
- Transport (riding & loading of vehicles, rails and rail tracks)
- Projecting nails and loose material
- Construction of temporary structures
- Avoidance of danger from collapse of structure
- Prevention of drowning
- Safety nets, sheets and belts
- Generation of steam, smoke and vapour
- Protection from falling materials

7.2.1 Exceptions
These Regulations do not apply to construction work undertaken within the boundary of a mine, or to premises used for refining metals or ores which are under the control of a mining company or authority.

7.2.2 Duties of employers
- Employers have the duty to comply with provisions of Construction (Safety and Health Regulations and to keep readily available a copy of these Regulations for use on the site of any construction work
- Keep a register of hoist, lifting machines and lifting tackle
- Employers are required to send immediately notice of an accident to an inspector.

7.2.3 Duties of employees
Employees have the duty to comply with provisions of the Construction (Safety and Health Regulations and to report defects in machinery, plant and equipment to their supervisors.

7.2.4 Health
- It is a requirement that suitable accommodation be provided for taking for meals, changing clothing, shelter during bad weather, sanitary
conveniences and facilities for washing off poisonous substances (brushes, soap, towels)
• An adequate supply of wholesome drinking water should be provided at a convenient point or points and clearly marked “Drinking Water”
• At every site where persons are employed in operations provision of a sufficient number of first-aid boxes is required
• A person trained in first-aid is expected to be in charge of first-aid box.
• Where more than 100 persons are employed at a site provision of a suitable stretchers and ambulance are required if these are not readily available from a nearby hospital.
• Where more than 100 persons are employed at a site which is 16 kilometers from a hospital, provision of a properly constructed ambulance room is required which has to be manned by a suitably qualified person and a record shall be kept of all cases of sickness or accident treated at the room.

7.2.5 Safety equipment to be provided
• Respirators to prevent inhalation of dust or fumes
• Suitable goggles or screens to protect the eyes of employees
• Protective clothing
• Adequate ventilation of confined spaces.

7.3 FACTORIES ACT, CAP 441
The Factories Act ensures the health, safety and welfare of workers in the workplace. It provides for the regulation of the conditions of employment in factories and other places as regards the safety, health and welfare of persons employed therein; to provide for the safety, examination and inspection of certain plant and machinery; and to provide for purposes incidental to or connected with the matters aforesaid. The Factories Act imposes a number of duties or obligations on the employer in order to ensure the health, safety and welfare of the employee at the work place.

7.3.1 Health
1. Cleanliness, it requires that dirt and refuse must be removed daily from floors and benches; the floor of every workroom must be cleaned at least once a week and where wet processes are carried on, adequate means of draining the floor must be provided. All inside walls, partitions and ceilings must:
   (i) If they have a smooth impervious surface, be washed
with hot water and soap or cleaned by other approved method every fourteen (14) months, or

(II) If kept painted in a prescribed manner or varnished, be repainted or revanished atleast once every seven (7) years and washed with hot water etc every Fourteen (14) months ; or

(III) In other cases, be whitewashed or colour washed every fourteen (14) months (Section 19)

2. Overcrowding
A factory must not be overcrowded. It prescribes that each workroom must have at least twelve (12) cubic metres of space for every person employed, not counting space more than four (4) metres from the floor.

3. Height
Every workroom must have not less than 3.048 metres in height from the floor to the lowest point of the ceiling or roof (Section 20).

4. Ventilation
Adequate circulation of fresh air in workrooms is a must. It requires the employer to ensure that measures are taken to protect workers against inhaling dust, fumes or other impurities likely to injure them. (Section 21 and 69)

5. Lighting
There must be adequate and suitable lighting in every part of the factory in which persons are working. (Section 22)

6. Sanitary Conveniences
It is the responsibility of the employer to ensure that suitable sanitary conveniences are available and these must be separate for each sex; and that these must be kept clean and must have sufficient lighting. (Section 23)

7. Meals in Certain Dangerous Trades
It prohibits the taking of food or drinks in workrooms where any poisonous substance is used or where there may be dust or fumes. (Section 70)

8. Protective Clothing, Appliances and Screening
Workers must possess suitable protective clothing and appliances, including where necessary, suitable gloves, footwear, goggles and head coverings to prevent excessive exposure to heat, cold or wet or to any poisonous or other injurious or offensive substances.
9. Goggles or Screens
   Appropriate or suitable goggles or screens must be provided to
   protect the eyes of persons employed in any process likely to
   entail injury to the eyes. This includes any person who may be
   exposed to electric arc welding flash. (Section 71)

10. Lifting Excessive Weights
    No one must be made to lift, carry or move any load so heavy as
    to be likely to cause injury. (Section 72)

11. Notification of Industrial Diseases
    The employer is required to notify an inspector of factories in
    cases of poisoning and where such has happened, a report
    must be made of the fact in the General Register. (Section 78)

Duty to provide personal protective equipment
An employer has an obligation to “provide at the employer’s expense all appro-
priate protective clothing or equipment to be used in the workplace by employ-
ees, who in the course of employment, are likely to be exposed to the risk of
bodily injuries, and adequate instructions in the use of such protective clothing
or equipment.” OHS Act No. 36 of 2010 (Section 16(2) d)

7.3.2 Safety
1. Fencing
   Every part of the transmission machinery and every dangerous
   part of other machinery, and all parts of electric generators motors,
   rotary converters, and flywheels directly connected to them must be
   securely fenced unless in such a position or of such construction as
   to be as safe to every person employed or working on the premises
   as if securely fenced; and any part of a stock – bar which
   projects beyond the head – stock of a lathe must be securely
   fenced unless it is in such a position as to be as safe to every
   such person as if securely fenced. (Sections 27 - 30)

2. Moving Parts of Other Prime Movers
   Moving parts of other prime movers and flywheels directly
   connected to them, and the head and tail race of a water wheel
   or water turbine, must be securely fenced irrespective of their
   position. (Section 27)

3. Vessels, Pits, Containing Scalding, Corrosive or Poisonous Liquids
   Fixed vessels, pits, etc containing scalding, corrosive or poisonous
   liquids, or any molten metal must be properly secured and must
have a clear warning notice, bearing in red letters in English and, in atleast one vernacular language commonly used by the employees, the word “DANGER” (Section 33)

4. Further Requirement in Connection with Transmission Machinery
Devices or appliances for promptly cutting off the power from the transmission machinery must be provided in every room or place where work is carried on. Every power – driven machine must be provided with an efficient starting and stopping appliance.

Efficient mechanical appliances must be provided to move driving belts to and from fast and loose pulleys. Driving belts must not rest or ride on revolving shifts when the belt is not in use. (Section 28)

5. Self – Acting Machines

Precautions must be taken to ensure that persons are not trapped between moving parts of a self – acting machine and any separate fixed structure or between moving and stationary parts of the machine. (Section 34)

6. Training and Supervision of Inexperienced Workers (Section 35)

A person must not work at any dangerous machine or in any dangerous process unless –
(i) He has been fully instructed as to the dangers and precautions, and
(ii) He has received sufficient training in the work or is under adequate supervision

7. Safe Means of Access and Place of Work (Section 37)

Every employer must ensure that –
(i) There must be provided safe means of access to every place at which any person has at any time to work
(ii) Every such place must be made and kept safe for everyone working there;
(iii) Fencing or other means must be provided to ensure the safety of any person who is to work at a place from which he would be liable to fall more than 2 metres and which does not afford secure foothold and, where necessary, secure handhold.

8. Precautions Against Gasing or Lack of Oxygen (Section 38)

The employer must put in place precaution for work in confined spaces where employees may be liable to be overcome by dangerous fumes or by lack of oxygen.
9. Explosion or Fire of Inflammable Dust or Gas (Section 39)
The employer must lay down precautions against explosion or fire for certain processes and for welding or soldering of containers which hold or have held any explosive or inflammable substance.

10. Fire
Appropriate means of fighting fire must be provided and maintained and kept mainly available in every factory irrespective of the number of persons employed. Persons trained in the correct use of such means must be present while work is going on in the factory. All highly inflammable substance must be stored in a fire – resisting store or in a safe place outside any occupied building. No fire, flame, smoking, or other agent likely to ignite volatile inflammable substance is to be permitted where it may ignite such substance.

11. Means of Escape in Case of Fire
The employer must ensure adequate means of escape in case of fire in every factory. The contents of workrooms unit must be so arranged that there is a free passageway to the means of escape. While any person is in any factory for the purpose of employment or meals, doors must not be so locked or fastened that they cannot be easily and immediately opened from the inside. Any door which opens on to a staircase or corridor from any room in which more than ten (10) persons are employed must open outwards unless it is a sliding door. Exit doors at the foot of staircases must open outwards unless they are sliding doors. Adequate landings must be provided at doors giving access to stairways. All fire exits must be distinctively marked by a notice printed in red letters of adequate size.

12. Fire Alarms (Sections 40-45)
Where more than twenty (20) persons are employed in the same building, effective fire alarms must be provided and maintained. This must also be done where explosives or highly inflammable materials are stored or used even if less than twenty (20) persons are employed in the building. Alarms must be tested and examined every three months and a report entered or attached to the General Register.
13. Notification of Accidents and Dangerous Occurrences (Sections 76 - 78) Accidents causing loss of life or disabling a worker for more than three days from earning full wages at the workplace must be reported immediately to an Inspector of Factories.

14. Dangerous Occurrences
   All dangerous occurrences must be reported whether or not they have caused death or disablement

7.3.3 Welfare (Section 63-66)
   1. The employer is required to provide basic welfare facilities such as adequate drinking water, washing facilities, storage for clothing not worn during working hours, first – Aid box and facilities for sitting when there is an opportunity when not working.

7.3.4 General
   1. The employer has a duty to register the premises used as a factory before they are occupied.
   2. He also must keep a General Register.
   3. The Employer must ensure that special regulations for Safety, Health and Welfare made for particular industries, factories, processes, plant etc are observed, printed and posted in the factory. (Section 85)
CHAPTER 8

WHAT LEAVE ENTITLEMENTS CAN A WORKER GET?

Normal working hours in Zambia are eight (8) hours a day and forty eight (48) hours a week. Any work done in excess of these hours and on Sunday and public holidays attracts overtime pay.

The law guarantees workers on permanent and pensionable terms and fixed term contracts the following leave entitlements with full pay:

8.1 Paid annual leave
Subject to any agreement between the parties providing for holidays with pay on conditions not less favourable to an employee than is provided for in this section, and subject to any statutory determination concerning holidays made in accordance with the Minimum Wages and Conditions of Employment Act, an employee shall, after six months’ continuous service, be entitled to a holiday with full pay at the rate of two days in respect of each period of one month’s service, to be taken at such time as shall be agreed between the parties (Section 15 (1) of the Employment Act).

Notwithstanding the provisions of subsection (1), an employer may, with the agreement of the employee, pay wages to such employee in lieu of any holiday due to the employee under that subsection and if any leave has been accumulated by an employee whose contract has terminated, the employer shall pay wages to the employee for the period of such accumulated leave. (As amended by No. 28 of 1971 and Act No. 15 of 1997).

An employee must seek the consent of the employer before he or she can proceed on leave. According to Section 5 (1) c, of the Minimum Wages and Conditions of Employment Act “the employer may give reasonable consideration to the exigencies and interest of the business of the employer in agreeing to the dates when the leave may be taken.”

8.2 Holiday allowance
According Section 5 (4), of the Minimum Wages and Conditions of Employment Act, General Order 2011, an employee proceeding on annual leave is entitled to one month’s basic pay as holiday allowance. This is in addition to a salary or wage.

8.3 Paid sick leave
i) In the absence of any written law more favourable to an employee, employees are entitled to paid sick leave for a maximum of 26
working days’ in any period of twelve (12) months, provided they provide a valid medical certificate (Section 54(1) of the Employment Act).

However, since the Minimum Wages and Conditions of Employment Act stipulates more favourable sick leave provisions an employee who is unable to work due to sickness or accident is entitled to paid sick leave on the following conditions:

a) At full pay during the first three (3) months;

b) Thereafter, at half pay for the next three (3) months; and

c) Medical discharge on recommendation of a medical doctor if the employee does not recover from the illness or accident after six (6) months (Section 6 (1-2) of the Minimum Wages and Conditions of Service, General Order 2011).

ii) Section 54(2) of the Employment Act also allows female employees one day’s paid leave per month without having to produce a medical certificate. This is commonly referred to as ‘Mother’s Day’.

iii) Female employees are also entitled to leave of absence without loss of pay to enable them nurse a sick child who is hospitalised (Section 6 (3) of the Minimum Wages and Conditions of Service, General Order 2011).

8.3.1 Medical Attention
Subject to provisions of the employment contract or collective agreement, the employer may provide an employee with medical attention and medicines and where necessary, transport to a medical institution during the illness of the employee (Section 43 of the Employment Act)

8.4 Compassionate leave
During an employee’s death or that of his or her spouse or child, the law obliges the employer to provide for a coffin, transport to and from the local graveyard and food for the funeral or financial assistance to cater for these costs (Section 13 of the Minimum Wages and Conditions of Employment Act). Though the law is silent on how much compassionate leave should be granted to a grieving employee, it is standard practice based, on cultural norms and traditions, for an employer to grant adequate paid compassionate leave to an employee who has lost a spouse, child, parent, brother or dependant.
8.5 Maternity Leave

- The Employment Act provides for twelve (12) weeks’ paid maternity leave for female employees after at least two (2) years of continuous service from the date of engagement or since the last maternity leave taken.
- The Statutory Instruments (SI’s) issued under the Minimum Wages And Conditions of Employment Act, General Orders 2011 provide for four (4) months’ maternity leave, subject to the two (2) year qualification period.

Under maternity leave provisions, even weekends and public holidays count towards the total maternity leave days one can claim.

- The Employment Act and MWCEA, No. 2 (General Order) 2011 require that an employer pays an employee her full salary during the period of maternity leave as statutory social security schemes do not provide maternity benefits.
- The MWCEA SI No. 3 (Shop Workers) 2011 and the MWCEA No. 1 (Domestic Workers) 2011 do not provide for pay during maternity leave and thus this leave is unpaid.
- It is illegal under the law for an employer to terminate a female worker’s employment or disadvantage her for reasons connected with pregnancy.
CHAPTER 9
ON WHAT GROUNDS CAN A CONTRACT OF EMPLOYMENT BE TERMINATED?

There are several ways in which an employment relationship may be legally brought to an end as outlined below.

9.1 By notice or payment in lieu of notice
A contract of employment can be terminated by either party giving an oral or written notice and the notice period has expired in case of an oral contract; and by written notice in case of a written contract. To avoid abrupt termination of employment, even where there is a fixed-term contract, an employee should be given prior notice of termination of contract.

The notice period varies as follows:

a) 24 hours where a contract is for a period of less than a week;
b) 14 days where the contract is a daily contract; and
c) 30 days where the contract is for a period of one week or more.

9.2 By dismissal based on conduct or performance (Section 26 A of the Employment Act)
A contract of employment can be terminated based on unsatisfactory conduct or performance, provided the worker has been given an opportunity to be heard on the charges laid against him/her. The aggrieved employee has a right to be heard and the hearing must be fair. The hearing should be done or conducted following provisions of the disciplinary and grievance handling procedures of the organisation. This necessitates that the business should have a code of conduct. The affected employee must be accorded the right to be heard before being dismissed.

9.3 By Summary dismissal
Wherever an employer shall dismiss an employee summarily and without due notice or payment of wages in lieu of notice, such employer shall within four (4) days (according to the Employment Act) and five (5) days (according Minimum Wages and Conditions of Employment Act) of such dismissal deliver a written report of the circumstances leading to and the reasons for the dismissal to the Labour Commissioner or the Labour Officer in the district in which the employee was working. The Labour Commissioner or the Labour Officer shall determine whether the circumstances of the case warrant the summary dismissal of the employee.

9.4 By Death
The contract of service of an employee shall be deemed to have been terminated following the death of an employee before the end of the contract.
9.5 By redundancy (Section 26 (B) 1 of the Employment Act)
The contract of service of an employee shall be deemed to have been terminated by reason of redundancy if the termination is wholly or in part due to:

(a) the employer ceasing or intending to cease to carry on the business by virtue of which the employee was engaged; or
(b) the business ceasing or reducing the requirement for the employees to carry out work of a particular kind in the place where the employee was engaged and the business remains a viable going concern.

9.6 By Retirement (Normal retirement)
An employment contract shall be deemed to have been terminated upon an employee reaching the pensionable age, which is 55 years according to NAPSA Act and Local Authority Superannuation Fund (LASF) Act and 65 years according to the Public Service Pension Fund (PSPF) Act.

9.7 By Discharge on medical grounds
An employment contract can be terminated on medical grounds as certified by a registered medical doctor.

9.7.1 Procedure for medical discharge
(Section 6 (1-2) of the Minimum Wages and Conditions of Service, General Order 2011)
Prior to lawful medical discharge, an employee who is unable to work due to sickness or accident is entitled to paid sick leave on the following conditions:

a) At full pay during the first three (3) months;
b) At half pay for the next three (3) months
c) Thereafter, medical discharge can be effected on recommendation of a medical doctor if the employee does not recover from the illness or accident after six (6) months

9.8 On expiry of the contract
a) A written contract of service can be terminated on expiry of the term for which it is expressed to be made. To avoid abrupt termination of employment, even where there is a fixed-term contract, the employee should be given notice of termination of contract.
CHAPTER 10

WHAT BENEFITS SHOULD I GIVE A WORKER ON TERMINATION OF CONTRACT?

The law specifies the following benefits:

10.1 Wages and allowances
In every case in which employment under a contract of service is lawfully terminated, all wages including overtime pay and allowances additional to basic pay shall be payable on the day upon which such contract terminates. (Section 48 (4) of the Employment Act) At the end of the notice of termination of contract, all wages and benefits due to the worker shall be paid. In case of a contract which is terminated without notice, payment of a sum equal to all wages and other benefits that would have been due to the employee if one had continued to work until the end of the contract.

Where an employee is dismissed for lawful cause, the employer must inform a Labour Officer. Where an employee is summarily dismissed, he or she shall be paid on dismissal the wages and other working or other allowances due to him up to the date of such dismissal (See Section 10.3 below regarding severance pay for lawful dismissal).

10.2 Leave pay
If any leave has been accumulated by an employee whose contract has terminated, the employer shall pay wages to the employee for the period of such accumulated leave.

10.3 Redundancy benefits (Section 26 B (3) of the Employment Act)
An employee whose contract of service has been terminated by reason of redundancy shall:

(a) be entitled to such redundancy payment as agreed by the parties or as determined by the Minister, whichever is the greater; and
(b) be paid the redundancy benefits not later than the last day of duty of the employee
(c) if a protected worker falling under the MWCEA General Order, be entitled to not less than two months’ pay for each completed year of service.

Provided that where an employer is unable to pay the redundancy benefits on the last day of duty of the employee, the employer shall continue to pay the employee full wages until the redundancy benefits are paid.
10.4 Severance pay for unlawful dismissal
Under Section 12 (3) of the Minimum Wages and Conditions of Employment Act, General Order 2011, it states that where the Labour Commissioner or Labour Officer, as the case may be, determines that the circumstances of the case do not warrant summary dismissal of the employee, the employee so dismissed shall be entitled to payment of severance benefits of not less than two (2) month’s basic pay for each completed year of service.

Otherwise, in the absence of express agreement between an employer and employee, the Employment Act does not give a right to severance pay on termination for any reason other than as outlined above.

10.5 Medical discharge
An employee whose employment is terminated on medical grounds as certified by a registered medical doctor is entitled to a lump sum of not less than two (2) months basic pay for each completed year of service. (Section 9 of the Minimum Wages and Conditions of Employment Act, General Order 2011)

10.6 Retirement benefits (Normal retirement)
An employee who has served an employer for more than ten (10) years and has attained the age of fifty five (55) years shall be entitled to a retirement benefit of three (3) months basic pay for each completed year of service. But where an employer has established a company pension scheme approved by the Minister, the retirement benefits of the employees shall be paid in accordance with the pension scheme (Section 8 (1-2) of the Minimum Wages and Conditions of Employment Act, General Order 2011).

10.7 Repatriation benefits or allowance
In an instance where the employee was recruited from a different place, the employer is obliged to repatriate the employee and his or her family to the place of recruitment or be paid a repatriation allowance sufficient to cover the costs of the employee, the employee’s family and their personal effects (Section 11 of the Minimum Wages and Conditions of Employment Act, General Order 2011 and Sections 13 – 14 of the Employment Act).
CHAPTER 11

DISPUTES

11.1 What is a dispute?
A dispute is a specific disagreement on rights or interests, or a disagreement on
a point of law or fact. There must be a claim by one party opposed by the other.
A dispute involves disagreement on issues capable of resolution by; negotiation,
conciliation, mediation and 3rd party adjudication (i.e. arbitration and litigation in
the courts of law).

The Industrial Relations Court (IRC) has original jurisdiction (or exclusive right to
hear and determine at inception) in all industrial relations matters and in addition,
jurisdiction (that is, not exclusively) to hear and determine any dispute between
an employer and an employee regardless of whether or not it relates to a collec-
tive agreement or a union matter. The court’s main objective is to do substantial
justice between the parties and it is therefore not bound by the formal rules of
evidence in civil and criminal proceedings (Section 85 (4-6) of the ILRA).

11.2 Individual disputes (Section 85(3) of the ILRA)
Disputes relating to contracts of employment may be referred to the Labour Of-
ficer. Individual disputes may only be instituted after the complainant or applicant
has exhausted all administrative procedures such as internal appeal procedures
within the employer’s organisation (Section 19 of amendment No. 8 of 2008 of
the ILRA). Note that reference of a dispute to the labour office is NOT reckoned
as part of the administrative process and importantly such reference must be
understood as done within the time-frame for submission of complaints in accor-
dance with section 85 (3) of the ILRA.

The employer must send a notice of termination of employment to the District
Labour Officer within four days of termination. Labour Officer or Labour Com-
missioner must record the details of every report regarding summary dismissal
in a register. Where the Labour Officer or Labour Commissioner finds that the
circumstances of a particular case did not warrant summary dismissal s/he may
order that the employee be paid severance benefits of at least two months’ basic
pay for each year of service.
11.3 Collective disputes

In collective disputes, the parties must first refer the matter for conciliation to a conciliator or a board of conciliators nominated by the parties by agreement or by the Labour Commissioner on failure to agree. If the conciliator(s) fail(s) to foster consensus between the parties within thirty (30) days of their appointment, either party may choose to refer it to a strike ballot, to an arbitrator for arbitration or to the IRC for adjudication (Section 76 of the ILRA).

According to Section 75 of the ILRA, a collective dispute shall exist when there is a dispute between an employer or an organisation representing employers on the one hand and the employees or an organisation representing the employees on the other hand, relating to terms and conditions of, or affecting the employment of, the employees and one party to the dispute has presented in writing to the other party all its claims and demands and—

(a) the other party has, within fourteen (14) days from the date of receipt of the claims or demands, failed to answer the claims or demands; or

(b) the other party has formally rejected the claims or demands and has made no counter offer; or

(c) both the parties to the dispute have held at least one meeting with a view to negotiating a settlement of the dispute, but have failed to reach settlement on all or some of the matters in issue between them.
11.3.1 Failure to reach settlement by conciliation (Section 78 of the ILRA)
(1) Where a conciliator or board of conciliation fails to settle a collective dispute the parties to the collective dispute may:
   (a) refer it to the Court; or
   (b) conduct a ballot to settle the dispute by a strike or lockout.

11.4 Alternative dispute resolution mechanisms (ADRMs)
Disputes may also be resolved extra-judiciary (outside the courts) through administrative authorities such as the Labour Commissioner, Labour Officers or the Minister of Labour and through alternative dispute resolution (ADR) mechanisms, namely:

- Conciliation
- Mediation
- Arbitration

**Diagram:**
- SUPREME COURT
- COURT ORDERED
- IRC or HC
- MEDIATION
- CONCILIATION
- DISPUTE
- DEMANDS/NEGOTIATIONS

**Key:**
IRC – Industrial Relations Court
HC – High Court
NOTE: Under the Factories Act, the employer may appeal against action taken by the Chief Factories Inspector to the Labour Commissioner, and if dissatisfied may appeal to the Minister of Labour and Social Security. The OHS Act provides for aggrieved employers to approach the Appeals Tribunal established in terms of the Act, and thereafter to appeal to the High Court.

### 11.4.1 Conciliation
ILO defines conciliation as: “the practice by which the services of a neutral third party are used in a dispute as a means of helping the disputing parties to reduce the extent of their differences and to arrive at an amicable settlement or agreed solution. It is a process of orderly or rational discussion under the guidance of the conciliator”

### 11.4.2 Mediation
(a) Mediation
Allows the parties to put forward suggestions as to how the matter might be settled in ways which they would not be able to do openly.

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### Summary of Labour Dispute Resolution Procedures

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(b) Court annexed mediation:
This will arise where the court finds that based on the facts of the complaint there are no legal issues to be decided.

High Court Act (Amendment) Rules, 1997:
• Judges discretion
• Criteria for ordering mediation
• 60 days to settle

11.4.3 Arbitration
Arbitration is similar to conciliation and mediation in the sense that the parties agree on involvement of a neutral third party to help resolve dispute:
• Third party makes an award (decision)
• Decision is final and binding (generally no right of appeal except in very narrow circumstances allowed under the Arbitration Act)

11.4.4 Objects of arbitration
• Fair resolution of disputes
• By an impartial tribunal
• Without unnecessary delay or expense
• Parties should be free to agree manner of resolution
• Subject only to safeguards necessary in the public interest
• Intervention by the courts restricted
11.4.5 Principle differences between Mediation and Arbitration

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<tr>
<td>• Determines rights</td>
<td>• Active participation</td>
</tr>
<tr>
<td>• Looks back to historical facts</td>
<td>• Focuses on getting agreement</td>
</tr>
<tr>
<td>• may be tedious and costly</td>
<td>• Focuses forward to workable solutions</td>
</tr>
<tr>
<td></td>
<td>• Quick and cost effective</td>
</tr>
</tbody>
</table>

If ADR succeeds, an award is given which is binding on both parties. But where ADR other than arbitration fails, the matter must be referred back to the IRC for adjudication.

11.4.6 Benefits of ADRMs

• Reduced transaction costs;
• Avoidance of management distraction;
• Maintenance of productive human relations;
• Early warning of supervisory problems;
• Systematic managerial approach to employment dispute resolution; and
• Other benefits of managing employee dissatisfaction.

11.5 INDUSTRIAL ACTION

The ILRA provides elaborate procedures to be followed in resolving disputes
before a strike or lockout can be declared. The procedure involves the referral of the dispute for conciliation. If the parties fail to reach a settlement agreement within the stipulated timeframes, either party may refer the dispute to the court, conduct a ballot to settle the dispute by strike or lockout, or refer the matter for arbitration. The duration of the strike and lockout is limited to fourteen (14) days. The Court is empowered to discontinue the strike if the Minister of Labour applies to the court that the strike is not deemed to be in public interest (ILRA Sections 75 -78).

Essential workers, as defined in Section 107(10) of the ILRA, are not allowed to go on strike.

11.5.1 What is a strike?
According to case law (the interpretation of statutes by Courts in cases heard), strike action is interpreted as a suspension of the contract of employment for the period of the strike. Provided the notice of the strike was given of equal length to that required for a lawful resignation, then this could be interpreted as a notice to suspend the contract of employment for the duration of the strike.

The right to strike is seen to be an indispensable component of a democratic society which is a fundamental human right and that the right to strike is justified as a necessary counter veiling force to the power of capital.

This is also in line with the spirit, purport and object of Article 21 of the Zambian Constitution read together with Section 5 of the ILRA guaranteeing the fundamental right to freedom of association (Convention 87) and right to organise and collective bargaining (Convention 98).