

The position of the Ghana Labour Law on accumulated annual leave: Perspectives from the University for Development Studies

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Abstract

Employees of the University for Development Studies have come to the conclusion that they have no obligation to accumulate their annual leave, and if that was done, they were most likely to forfeit it if not taken within the calendar year in which the leave is earned mandatorily. The rule, order, and directive emanate from the Office of the Registrar, cautioning staff to take their leave within the calendar year or forfeit it. The approval authorities refuse to grant accumulated leave claim requests with the assumption that staff have been given enough information on management's decision not to approve accumulated leave. As a result, this paper reviews the basic employment conditions in Ghana with particular reference to annual leave, the Unified Condition of Service for Unionized Staff of the Public Universities of Ghana, the 1992 Constitution of Ghana, the propositions in the Ghana Labour Act 2003 (Act 651), and the position of the International Labour Organization (ILO) on holidays with pay. The study revealed that leave administration is the discretion and responsibility of the employer to decide which month in the year the worker should take his or her annual leave; the power to defer the worker's leave from one month to another; the discretion to grant the worker's leave in portions; the discretion to defer the annual leave is limited to and within the 12 calendar months; and under no circumstance should the employer defer the leave into the subsequent year because such an act will be contradictory to Section 31 of Act 651; The study therefore recommends that the employer or employer representative should ensure that every employee is able to claim his or her annual leave, inclusive of accumulated leave days, before the end of the calendar year.

Keywords: Annual Leave, Accumulated Leave, University for Development Studies, Labour Act 651, Employer, Employee

Introduction

The University for Development Studies, since its establishment in May 1992, has designed various strategies in its recruitment and selection process to employ the best employees for the various faculties and departments. The university views its human resources as its most precious assets because they have the skills and knowledge to work to meet the main objectives of the university.

Leave is one of the compensation packages that employers use to empower their employees to take holidays and still be paid. Adofo (2020) presents that leave is a right and workers are entitled to enjoy it without fear of being taken away at their own instance or the instance of the employer. The number of leave days a worker is entitled to, as well as the way and conditions in which he or she takes advantage of those leave entitlements, are topics that are subject to the contract between the employee and his or her employer, but they may not conflict with the

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minimum requirements in Act 651. The Act states clearly in Section 31 that "any agreement to relinquish the entitlement to annual leave or to forgo such leave is void." From the lame man's perspective, determining the voidness of an action is to determine its non-existence in Law. The phrase "an agreement to forego or relinquish leave is void" and not the leave itself make the clause in the Labour Act clear-cut. This makes it quite obvious that no employee may forgo, cede, waive, or avoid taking time off in accordance with the Ghanaian Labour Law. As a result, leave days are safeguarded by the legislation or the collective bargaining agreement between the company and employee.

According to Danquah (2020), the legislative purpose of leave with pay is twofold. First, it protects the health and safety of the worker by addressing such issues as fatigue, stress, burnout (associated with mental or psychological illness), and other social needs with rest and leisure. Secondly, evidence shows that a well-rested worker is more productive at the workplace. He contends that there is an attendant benefit to the economy from increased productivity and increased consumption through leisure and domestic tourism. Leave also gives the worker a rest period to refresh themselves so they can provide their best performance. A fatigued or stressed worker would be less productive, and it is only during the planned leave period that the employee could rest and gain more energy to improve work performance.

Antwi-Boasiako (2020) posits that annual leave allows workers to take paid time off from work for the purpose of having regular breaks so that they can rest and re-energize themselves. He is of the opinion that workers who take regular holidays can be more motivated about their work and perform more effectively than those who do not. He argues that they are less prone to accidents and are less likely to suffer from stress because they have regular opportunities to rest, which means they might take fewer sick days.

The statement of the problem

There appears to be a great deal of confusion surrounding whether workers at the University for Development Studies could be forced to go on leave or forfeit their accumulated annual leave. The confusion stems largely from the fact that a letter dated March 31, 2021, from the Registrar's Office cautioning staff of the university on the abuse of deferment of annual leave. It clearly made reference to Article 20.01 of the Unified Condition of Service for Unionized Staff of the Public Universities of Ghana, which stipulates that "Leave for one year may not be carried forward to the next year unless in exceptional circumstances and with the written approval of the Registrar on the recommendations of the Head of Department."

The caution comes as a result of what appears to be a deliberate drive on the part of some workers to refuse to go on leave and wait till the end of the year to apply for deferment of the annual leave in anticipation of having more days of rest and the opportunity to do other activities in the subsequent years. The caution then made it clear that "management would no longer approve any deferment of leave if the recommendations of the heads of department do not indicate any compelling reasons to support the deferment". The directive further added that "no staff can accumulate his or her annual leave for more than two (2) years, even when deferment is approved".

This directive has sparked reprisal requests from all administrative staff seeking to take their annual leave during the month of December since the leave cannot be carried over. This situation is most likely to pose management challenges in the faculties and various departments. The majority of the university's administrative staff lack the understanding of how annual leave should be administered as a result of errors committed by previous Registrars who permitted staff to accumulate annual leave for up to five years without forfeiting the accumulated days. The purpose of this paper is therefore to analyze the directive and the confusion surrounding the question of whether a staff cannot enjoy accumulated leave claims without forfeiture and provide some guidelines on managing the issues of annual leave claims with a view to minimizing conflict between management and staff at the University for Development Studies by reviewing the provisions made in the various labour laws and human resource policy documents.

The paper will provide education for staff by disabusing their minds that an employee can accumulate annual at will. Staff would also be aware that reaching an agreement on the leave schedule, the employer will enforce it, barring any exigencies on either side that necessitate some adjustment and that the best-positioned party to ensure compliance is the employer, who has authority over the workplace, rules, and initiatives. Furtherance to this, the paper will make staff aware that leave is a right and workers are entitled to enjoy it without fear of it being taken away at their own instance or the instance of the employer.

Methodology

The study reviewed secondary data on accumulated annual leave with particular reference to the provisions made in the Unified Condition of Service for Unionized Staff of the Public Universities of Ghana, the Ghana Labour Act 2003, Act 651, the position of the 1992 Constitution of Ghana, and the propositions in the International Labour Organization on Holidays with Pay Convention. The propositions were presented from each of the policy and legal documents, after which a critical analysis of each was made, making references to court cases and rulings.

Since "ignorance of the law is not an excuse," as the proverbial saying goes, "ignorance of the propositions in the legal documents and human resource policies became absolutely necessary to unearth to a better understanding of leave administration." These documents contained the details that were required as a result of the unchecked rate of yearly leave accrual. More crucially, the problem may be subtly causing poor health conditions among public employees, which would be a financial burden on the state.

The analysis of the documents increases the veracity of the information presented here because they serve to represent the state and to set policies for how its departments and agencies should operate. Additionally, it is simple to identify the source of the information given to allay concerns and foster harmony among university administrators and other public officials.

Basic conditions of employment in Ghana

The Labour Act 651 of 2003 consolidates and updates the various pieces of former legislation and introduces provisions to reflect ratified ILO Conventions. The Labour Act covers all employers and employees except those in strategic positions such as the Armed Forces, Police Service, Prisons Service, and Security Intelligence Agencies. Major provisions of the Labour Act include the establishment of public and private employment centers, protection of the employment relationship, general conditions of employment, employment of persons with disabilities, employment of young persons, employment of women, fair and unfair termination of employment, protection of remuneration, temporary and casual employees, unions, employers' organizations, and collective agreements, strikes, the establishment of a National Tripartite Committee, forced labour, occupational health and safety, labour inspection, and the establishment of the National Labour Commission.

The Ghanaian Labour Law requires that a written contract of employment be provided for workers employed for six months or longer periods. This written statement must include information about the worker and employer, the date of appointment, the job title, the wage rate and payment interval, the work hours, overtime payment, annual leave, conditions relating to incapacity for work due to injury or sickness, the length of termination notice required by the worker and employer, and details of social security (Sections 12(1&2) of Act 651). Section 13 of Act 651 states: "The written statement of particulars containing the main terms and conditions of employment should be provided to a worker within two months of the commencement of employment." The contract must be signed by both parties and dated.

Special provisions relate to temporary and casual workers (Part X of the Labour Act 651). A contract of employment for a casual worker need not be in writing, but casuals have rights to minimum remuneration for each day worked, overtime, and medical facilities. Temporary workers are entitled to the minimum requirements of the Act in respect of minimum wage, hours of work, rest periods, paid public holidays, night work, and sick leave, irrespective of whatever terms are agreed by the parties.

Nature of leave in Ghana

Article 24 (1) and (2) of the 1992 Constitution of Ghana states that "every person has the right to work under satisfactory, safe, and healthy conditions and shall receive equal pay for equal work without distinction of any kind; be assured of rest, leisure, and reasonable limitation of working hours and periods of holidays with pay, as well as remuneration for public holidays. Article 11 clause 7 of the Constitution, under the laws of the country, states that "Any order, rule, or regulation made by a person or authority under a power conferred by the constitution or by any other law shall:

1. be held before Parliament;
2. be published in the Gazette on the day it is laid before Parliament and
3. come into force at the expiration of twenty-one days after being so laid, unless Parliament, before the expiration of the twenty-one days, annuls the order, rule, or regulation by the votes of not less than two-thirds of all the members of Parliament.

The Ghana Labour Act 2003, Act 651 outlined two of leave. The "event-based" leave is the first type, and "annual leave" is the second. The former is earned when a certain circumstance, such as maternity leave or a medical emergency, occurs. However, some businesses have alternative leave options that are more event-based, like compassionate leave, study leave, paternity leave, and sabbatical leave, among others, that they offer out of generosity or agreement. The law does not require this categorization, but once it is given, the employer must comply with it. The important distinction is that an event-based leave, whether prescriptive or elective, is due when the event giving rise to it occurs. For instance, Section 57 of the Act stipulates that a pregnant mother is entitled to at least twelve weeks of maternity leave following certification. Similar to this, Section 24 offers sick leave that is separate from annual leave. It must be noted that a worker is only eligible for any of these event-based leaves after the occurrence of the circumstance that gives rise to them. Therefore, neither a healthy worker nor a non-expecting mother can be granted maternity leave or sick leave. According to Osei-Afful (2020), an event-based leave cannot be deferred or accumulated by virtue of its very character. This is especially true because the employee is given an event-based leave in order to provide her the time she needs to cope with a particular event-bound circumstance. To allow for recovery, employers must provide paid sick time, as well as study time for academic purposes. The event-based leave cannot be deferred, postponed, or converted to cash, therefore in practice, if it is not used, the employee forfeits it.

Annual leave, on the other hand, has a different nature. Both the employee and the organization have a part to play in making sure that leave is used. Taking time off is important for both health and safety and productivity. It is fully covered in Part IV of Act 651, Article 24, and the Constitution. The minimum requirement for full service is fifteen working days per calendar year, according to the law. Organizations are free to increase but not decrease this number; this is merely the minimum.

Section 20 of Act 651 provides that in any undertaking, every worker shall be entitled to leave for not less than fifteen working days with full pay in any calendar year of continuous service. It went further to state in Section 20(2) that the expression "full pay" means the worker's normal remuneration, without overtime payment, including the cash equivalent of any remuneration in kind. Tackling the former statement, the number of leave days a worker is entitled to, the manner and circumstances of enjoying such leave entitlements are matters that are subject to the contract between the worker and the employer but shall not contradict the minimum provisions of Act 651. Osei-Afful (2020) points out that Section 105(4) of the Act provides that where a collective agreement is able to negotiate better terms more favourable to the worker, the same will prevail against what the Act provides. He opines that, in terms of varying a worker's rights under the Act, the law only allows the parties to negotiate more favourable terms for the benefit of the worker and not otherwise. Thus, an employer cannot provide a worker with terms that are worse than what is afforded under Act 651.

The second statement, in terms of references to university staff, is that the minimum number of leave days enjoyed by a worker is twenty-five (25) working days in a year for junior staff, forty-two for senior staff and sixty-two for senior members excluding public holidays, which is over and above the mandatory minimum of 15 days of leave

provided in Act 651. Public university workers enjoy annual leave days ranging from a maximum of 62 consecutive days to a minimum of 25 working days. This implies that university workers in Ghana are benefiting from two components of leave entitlements:

1. legislative entitlement; and
2. contract entitlement.

Each of these elements of a rights claim must be consistent with the legal framework or fail. The leave entitlements of university workers in Ghana are an undisputed fact and practice within the University System in Ghana.

Reference to Section 20.01 of the Unified Condition of Service for Unionized Staff of the Public Universities of Ghana states that "the leave year shall be the same as the financial year. Leave for one year may not be carried forward to the next unless in exceptional circumstances and with the written approval of the Registrar on the recommendations of the Head of Department. Vacation leave shall be at rates determined from time to time by the university. Section 20.01b of the conditions of service however, makes it clear that "on the recommendations of the Head of Department, the Registrar may require an employee to interrupt his or her leave to discharge any duty or to undertake any course of instruction. The remaining portion of his/her leave shall be taken at a later date convenient to the department, in which case the staff concerned will be paid his cost of transport in and out".

Section 20.01c further added that "an employee who is recalled indefinitely with prior approval of the Vice-Chancellor, from annual leave resulting in the indefinite deferment of leave already approved, 15% of the annual basic salary shall be paid as an allowance in addition to transport costs. He shall be credited with the remaining leave days. Subject to the modalities laid down by the employee, any sick leave granted by a registered medical practitioner to an employee while on annual leave shall not be computed as part of the annual leave, and an employee while on annual leave may, on application, be granted a leave travel advance in lieu of a salary advance, subject to the availability of funds.

Accumulated leave

Leave may accumulate as a result of a worker taking an earlier event-based leave like sick leave, maternity leave, or even a public holiday, performs volunteer community service or official duties, is interrupted by the employer, or is reinstated to her job after being suspended. It is obvious that in any of these scenarios, leave may be accrued, and the employee does not lose it after the relevant event has passed. Another group of employees may not have taken advantage of their leave time for reasons other than work-related pressures. For instance, a worker might not make any effort to use his leave because of the poisonous environment at home brought on by a failed marriage. Additionally, some employees could decide to save up their leave days for obligations outside of work. Therefore, it is essential that the employer oversee the administration of leave and set rules for how employees use their vacation time.

Employers are responsible for handling other duties and the administration of the leave procedures as stated under Section 27 of the labour act. According to Section 8, the employer has the right to, among other things, transfer the employee, alter the task, extend or stop operations, and allocate labour. Even if a worker's rights include the right to relax during breaks and vacation days, these rights can only be exercised with the employer's permission. The employee will often need to apply to the employer for her leave, and the company will have the last say on whether to approve, review, or postpone the request. When an employer postpones a leave, it may last past the current fiscal year. Other times, the employer can have underemployed.

The limiting of yearly leave accrual within the public sector is one of its antidotes, as stated in its Revised Policy Framework on Leave Entitlements and Management for the Public Services of Ghana. According to the rules, such accruals are only allowed for a maximum of two years before requiring "appropriate approval," which should be requested from the governing boards and councils. This policy is generally legal given the difficulties it mentions, including high rates of leave accruals, a high absence rate, and unethical behaviour by staff. However, when the institution's management neglects to guarantee the effective application of the policy's requirements,

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special problems may occur. For instance, the policy aims to place more of the burden of duty for managing leaves of absence on the employee than the organization. This is against the plain meaning of Section 27 of Act 651, which places responsibility for managing the leave on the employer. In my opinion, it will be illegal for an employer to deny an employee of accumulated leave time under the pretense of a law or policy if the business fails to ensure that the employee takes her annual leave. It is well known that policy cannot supersede the law, especially in employment situations when employees.

Convention No. 132 (Holidays with Pay Convention, Revised, (1970) of the International Labour Organization's position on leave entitlement, is now a settled claim in human rights law and personnel normative rights among its signatory nations, of which Ghana is one. In broad terms, Article 1 of ILO Convention No. 132 states that "this Convention, in so far as it is not otherwise made effective by means of collective agreements, arbitration awards, court decisions, statutory wage fixing machinery, or in such other manner consistent with national practice as may be appropriate under national conditions, shall be given effect by national laws or regulations.

Leave administration

The University for Development Studies in accordance with section 27 of Act 651 has to manage the leave process. It is therefore the responsibility of UDS to facilitate the leave process as much as possible. Section 27 of Act 651 places the burden of administering the leave processes and their functions on the employer. It is therefore imperative for the employer to exercise the responsibility of ensuring workers take their leave in a systematic manner. Where the employer allows leave days to be taken but the worker refuses to utilize the same, it may be difficult for that worker to raise non-utilization of his leave and assert accumulation. This is further complicated by the fact that no one can be compelled to enjoy his right or benefit, although a person can be compelled to perform an obligation. Leave administration is therefore the discretion and responsibility of the employer to decide which month in the year the worker should take his or her annual leave; the power to defer the worker's leave from one month to another; the discretion to grant the worker's leave in portions; the discretion to defer the annual leave is limited to and within the 12 calendar months; and under no circumstance should the employer defer the leave into the subsequent year because such an act will be contradictory to Section 31 of the Labour Act 651.

It is however, absolutely essentially necessary for UDS to have a leave planned for its employees or being planned to be interrupted. The law anticipating under Section 25 of Act 651 states that where, due to the exigencies of the work or necessity, leave has to be interrupted or cannot be taken as scheduled "the worker shall not forfeit the right to the remainder of the leave but shall take the leave anytime thereafter...". Again, the emphasis is that the leave will not be forfeited, and section 26 of Act 651 ensures that the employer will reimburse the worker for the cost of the interruption. The law seeks to protect the worker because the power imbalance between the master and servant relationship makes it imperative for the employer to determine the programme, policies, and discipline in the workplace to ensure compliance. In this case, the employer, who stands to benefit from a worker who is coerced not to take his leave, enforces the leave entitlement. In accordance with Section 122 of the Ghana Labour Act 651, labour inspectors are charged with the responsibility of ensuring that employers comply with this and other legal obligations.

Danquah (2020) contends that in a situation where a worker has accumulated leave and is still employed, the worker would be entitled to his or her accumulated leave. Where the worker is at the end of his or her employment, the accumulated leave would be converted into cash as compensation or damages for denial of the worker's leave entitlement. He added that the worker's right to accrue damages and compensation is in order. According to Danquah (2020), the employer cannot benefit from his or her failure to enforce compliance, and the worker cannot be punished with forfeiture or less for neglecting, in good faith, to enforce a measure outside their control. He however stated that this situation should be distinguished from a situation where an employer or employer representative, in control of the workplace, fails to enforce leave allotted to him/her with the aim of benefiting financially from such failure. In such circumstances, it will amount to fraud, which vitiates everything, and therefore, such an offer, if due for retirement, will forfeit the financial compensation or damages.

The position of the Ghana Labour Law on accumulated annual leave

Danquah (2020) enumerates from the Labour Act 2003 (Act 651) for any worker who is still in active service the following:

- The legally protected leave days in any calendar year of continuous service with full pay cannot be waived, omitted, forfeited, relinquished, or voided by the worker;
- The employer is under a legal obligation to enforce compliance in the employment relationship given the balance of power and as controller of the workplace, including workplace programs and policies; and
- Failure to enforce compliance will not extinguish the leave days or render them void or forfeited. The legally protected leave days, which cannot be taken in good faith, will accumulate and must be taken in kind if possible or compensated for if possible. It is impossible to take only those cases where the person is resigning, being terminated, or being pensioned.

An employee may be allowed to use his or her annual leave in two approximately equivalent portions. Every employee is entitled to uninterrupted annual leave, although under extreme circumstances, an employer may ask a worker to end their vacation early and report to work. After the interruption, the worker must resume their leave and the employer must cover any reasonable costs they incurred as a result of the disruption. Article 8 (1&2) of the ILO Convention number 132 supports act 651 that the responsible authority or the proper machinery in each nation may give permission to divide the annual paid holiday into portions. One of the portions shall consist of at least two continuous working weeks, unless otherwise specified in an agreement that applies to both the employer and the employee in question. This is given that the employee's length of service qualifies him for such a term.

At least 30 days before the start of the leave, the employer is required to notify the employee. Due to illness happening within the duration of annual leave, annual leave is separate from sick leave that has been certified by a medical professional. The employee is entitled to annual leave upon termination of the employment contract in proportion to the time served throughout the calendar year, with the exception of situations when the employer terminates the employment without giving notice. Any agreement to give up the right to take annual leave or to forego taking it is void.

Employers must maintain a record that includes the following information: the date each employee started working for them, the amount of annual leave to which they are entitled, the dates on which each employee took annual leave, and the compensation each employee received for taking annual leave.

Article 9(1) of Convention No. 132 of the International Labour Organization of June 24, 1970 concerning Annual Holidays with Pay (revised) states: "The uninterrupted part of the annual holiday with pay referred to in Article 8, paragraph 2, of this Convention shall be granted and taken not later than one year, and the remainder of the annual holiday with pay no later than eighteen months, from the end of the year in respect of which the holiday entitlement has arisen. It is clear from the entire Convention, which was ratified by 37 states with the exception of the United Kingdom and Northern Ireland, that the propositions were very directive. It is therefore not surprising that most of the propositions in the Convention are also contained in the Ghana Labour Act 2003 (Act 651). Ghana has been a member of the ILO since May 20, 1957. One would therefore not be wrong to conclude that the 1970 Convention of the ILO might have influenced the drafting of the Labour Act 2003 (www.ilo.org).

Findings

The paper revealed that, as with any other right, a worker's right to leave cannot be readily taken away. Without further thought, a purposeful reading of the Labour Act does not imply that annual leave is lost at the end of the current work year. It is also a compensation package that employers use to empower their employees to take holidays and still be paid. However, the worker must apply for it.

The paper found out that the employee is prohibited from waiving, omitting, forfeiting, relinquishing, or voiding the legally mandated leave days in any calendar year of continuous service with full pay. Therefore, the employer

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is required by law to enforce compliance in the employment relationship given the balance of power and as controller of the workplace, including workplace programmes and policies.

The study discovered that leave days will not be lost, invalid, or forfeited for failure to enforce compliance. The legally mandated leave days will accrue and must be used in kind whenever possible or compensated for whenever practicable. These days cannot be taken in good faith. It is impossible to limit the cases to those in which the individual is quitting, being fired, or receiving a pension.

The study also learnt from the review that employees were not given copies of the leave policies, and neither did they try to read them. They were therefore unaware of their rights as regular employees of the university.

The paper established that the legislative purpose of leave with pay is twofold. First, to protect the health and safety of the worker by addressing such issues as fatigue, stress, burnout (associated with mental or psychological illness), and other social needs with rest and leisure. Secondly, research have proven that a well-rested worker is more productive at the workplace.

Discussion

Under the basic conditions of employment in Ghana, annual leave is part of the conditions of service of the worker and is provided in a written statement (Sections 12(1&2) of Act 651). In practice, therefore, the employer manages the leave schedule to ensure that production or work does not unduly suffer. With such powers of control by the employer, it is impossible for the worker to proceed on leave without the prior approval of the employer. On the other hand, it is possible for a worker's intent to proceed on leave to be stopped from doing so, and he would oblige for fear of losing his job. Clearly, the enforcement of leave entitlement is the employer's obligation. The worker cannot be punished at the same time by forfeiture or loss of leave days if the employer fails to enforce the leave entitlement.

Section 20.01b of the Unified Conditions of Service for Unionized Staff of the Public Universities of Ghana makes it clear that "on the recommendations of the Head of Department, the Registrar may require an employee to interrupt his or her leave to discharge any duty or to undertake any course of instruction. The remaining portion of his/her leave shall be taken at a later date convenient to the department, in which case the staff member concerned will be paid his cost of transport in and out and cannot therefore forfeit his/her leave entitlement.

Based on the provisions in Article 11, Clause 7 of the 1992 Constitution of Ghana, Norman (2018) postulates that all public universities in this country were established by acts of parliament and given the mandate to make rules and regulations governing them internally. Irrespective of this power, the rules and regulations were made to comply with Article 11(7) before they could be fully implemented. Perhaps out of ignorance of the law or laziness, the managers of these universities ignore their duties and, as such, seldom pursue these measures.

This seems to suggest that when the orders, rules, and regulations are trampled on, some of the civil liberties of those within the society are violated, and a parliamentary review of the rule, order, or regulation is required to fulfill due process considerations and to satisfy the law that action in the public interest was paramount (Norman 2018: p. 16). He added that public universities have raised statutes and operate under them that are defective for not laying such statutes and rules or regulations before Parliament to meet the requirements of Article 11(7) of the 1992 Constitution. In view of this, most managers of universities and institutions are willing to turn a blind eye to such developments, so long as no particular group interests are being compromised.

Many proponents of leave forfeiture may be tempted to rely on Section 31 of Act 651, which prohibits agreements to forgo leave. This was the argument of the appellant in the Court of Appeal case of Samuel M. K. Adrah vs. the Electricity Company of Ghana. The proponent had accumulated 249 days of annual leave, which he was subsequently granted. However, this was terminated by the appellant company under the guise that accumulated leave was prohibited under Act 651. However, the Court of Appeal disagreed with the argument. The Court agreed that the trial judge did not violate Section 31 nor any provision of Act 651 by outlawing commuting accumulated leave to cash. It therefore proceeded to commute the accumulated leave to cash, which was equivalent to circa

10.6 months salary. Regarding compiling the accumulated leave, the Court purposefully construed the leave provisions of Act 651. It concluded per Ofoe J. A. that "...legally, it is not every agreement to forgo leave that is void simpliciter and for which accumulated leave yields no benefits for the worker". In reaching this conclusion, the Court of Appeal partially reviewed the leave process at the appellant company, which is similar to that of many employers.

From the discussions propounded, it implies that commuting annual leave into cash is permissible where the worker is exiting employment. If the worker remains in the employment, then the employer must allow the worker to enjoy the unspent leave unless the worker was granted the leave and later neglected to proceed on the leave. In the Adrah case, while he was on his accumulated leave, he was declared redundant, and part of the agreement between the Senior Staff Association and Management of the Electricity Corporation of Ghana (ECG) was that the rest of Adrah's leave days he had not enjoyed should not be paid. Adrah then sued ECG at the High Court to protect his rights. He argued that the Senior Staff Association had no power to negotiate a benefit that was personal to him.

The Court then held that the ECG had to commute to cash the remaining leave days of Adrah, which he was in the process of enjoying but for the interruption by management by way of the termination of his appointment. The ECG appealed to the Court of Appeals. The Court of Appeal dismissed the appeal by ECG and affirmed the High Court's decision. Otherwise, the decision would have been a contravention of the provisions made in Section 31 of Act 651.

The rights of the worker as provided in Section 8 of the Act 651 include assigning work, disciplining the worker, modifying work, extending or ceasing operations, and transferring the worker, among others. Although the rights of the worker include rest in the form of breaks and leave days, such rights can only be enjoyed when approved by the employer. Naturally, the worker will have to apply to the employer for his leave, and the employer will have the discretion to approve, review, or defer it. In a situation where the employer defers that leave, it can go beyond the current labour year. In some instances, the employer may have been underemployed, making it difficult to release workers to utilize their full leave days, as referenced in the Adrah case. It will therefore be unacceptable to deny such workers, whose leave may have accumulated, the right to utilize it, especially through no fault of their own.

Recall that Norman (2018) posits that annual leave entitlement in the case of universities is both a contractual and legislative right. Once it is vested, once the staff has worked for the number of months necessary to earn those leave days, it is clearly an unconscionable act for another person to attempt to take it away and deprive the worker of a substantive right for which he or she has already worked for 12 calendar months. Therefore, where the need arises to defer a worker's leave, it is the mandate of the Registrar or the Vice Chancellor to negotiate, arrange, or consider, on humanitarian grounds, the postponement or deferment of the leave of a worker.

Recommendations

The labour act makes it clear that every worker is entitled leave with a minimum of fifteen working days. Therefore, Management of the University for Development studies and for that matter employers should not sit on the interest of workers by depriving them from their leave. Leave is a compensation package that employers use to empower their employees to take holidays and still be paid.

It is onerous on UDS or her employer representative to ensure that every employee is able to claim his or her annual leave, inclusive of accumulated leave days. Management of UDS, therefore, needs to maintain an active leave plan and insist the workers utilize their leave. One truth is that a worker who refuses to take her leave may be a risk to the institution. Such risk may be in relation to performance, fraud, or health. It is preferable for UDS to make leave utilization an appraisal issue for both the worker and the supervisor. UDS must specifically communicate leave periods and document them properly. Finally, they should maintain documentary evidence that will confirm they duly required the worker to take his leave or approved leave. Workers, on the other hand,

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must apply for leave where UDS management fails to initiate it. The worker should, therefore, not intentionally refuse to utilize his or her leave unless specifically prevented or recalled by the employer.

Management of UDS and Employers in general with their respective supervisors should as much as possible circulate a clear leave policy that is consistent with the national legal framework on the rights of employees and with the fair play approach under Contract Law (ILO, 1970). To cure the potential for an unusually long leave of absence with pay by staff of the university in the scenario discussed above, the Labour Act of 2003, Section 27, compels the employer, or supervisors of the employee in the case of universities, to maintain and supervise a roster of leave.

Conclusion

The right to annual leave is conferred on the worker by statute (Section 20 of the Labour Act 2003, Act 651) and cannot be deprived of a worker just as any other right. It is extinguishable after 12 calendar months (Section 31 of Act 651), and therefore, annual leave cannot be accumulated because it does not exist after 12 months.

The examples from the various jurisdictions provided in this paper show that there is unanimity regarding the right of workers to accumulate leave unless it is prohibited by national law, rule, or regulation duly created, perfected, and properly propagated or gazetted.

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