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Work Related Rest-An Employer's Favour or Employee's Right? A Perspective of Ghana's Legal Regime

Samuel Kofi Amoah[1*], Jacob Mensah Mesuh[2], Joseph Bikunati Zimpah[3], Irene Terquor Machu[4]

[1,3,4]Wisconsin International University College, Ghana.*
[2]Ho Municipal Hospital, Eye Unit, Ghana.

Email: [2]jacobmesuh@hotmail.com, [3]josephzimpah@gmail.com, [4]irene.machu@wiucghana.edu.gh
Corresponding Email: [1]skayamoah@gmail.com*

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Abstract: ***Work related rest is highly ignored by employers especially in Ghana's private corporate sector. In a highly competitive job market and scarce job opportunities, employers tend to perceive jobs as favour being made to employees. This perception tends to influence employers to deprive employees of their necessary work-related rest breaks rightfully due them. Such actions by these employers in most cases seem uncontested by employees since they are not privy to their rights to work related rest or tend to apprehend fear that they might lose their jobs in a bid to agitate for their legal rights to rest breaks. Alternatively, an employer may not restrict an employee's right to rest breaks but rather, employees may tend to ignore their rights to rest especially in the form of annual leave for want of excessive financial gain. This paper highlights provisions on work related rest from Ghana's Labour Act,2003 (ACT 651) which is a domestic law drawn from the International Labour Organization. The manuscript advances practicality of the sections on rest breaks highlighted by the Labour Act of Ghana by introducing both Ghanaian and Common law cases on rights and obligations of employers and employees in relation to rest breaks in Ghana.***

Keywords: Work Related Rest, Law, Employer, Employee.

1. INTRODUCTION

In today's world, businesses; whether large corporations or small enterprises are deeply involved in the production of goods and services putting in relentless efforts with the aim to meet consumer demands and maximize profits. However, amidst this constant production, rest

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periods for workers often appear to be intentionally overlooked by both employers and employees. Employees' right to rest from work when violated remain uncontested while employers depriving their employees of necessary rest breaks, hardly see enforcement by relevant authorities. As such, work related rest has been a highly ignored element of the corporate sector in most developing parts of the world including Ghana. In situations where the laws of a specific area provide for rest breaks, they are often ignored while stipulated laws are often merely cited without immediate prescribed sanctions accompanying them. Right to rest from work seem practicably enforceable where an individual decides to challenge their enjoyment of such rights and in an absence of a bid to enforce, it suggests that these violations of rights to rest from work are normal. The relevance and impact of a deprived rest regime from work has been evidently stressed out in several literatures by exponents but limited to the legislative practicability, scope or perspective of existing laws and regulations protecting the rights of employees and enforcements through prescriptive sanctions. Fatigue encountered by workers has been found to be influenced by various aspects of their work schedules. These factors include the duration of working hours, the availability of rest breaks, and the timing of consecutive shifts **[**1]. Rest from work is considered as a recovery opportunity that may involve recovery activities and/or experiences [2]. The essence of rest from work is to ensure employee wellbeing and performance. Wellbeing is considered as the overall quality of an employee's experience and functioning at work [3]. To that effect, there should be a deliberate intent by the employer and the employee to ensure their workers rest to maintain a good wellbeing.
From the introduction made supra, rest from work or rest break from a legal perspective could be considered as a systematic incorporation of regulations by a sovereign of a state or a body or organ granted the authority or a consensus by an assemblage of states to create a sole or an incorporation as part of a legal document, specifically for the management of rest, health, safety and wellbeing of workers.

2. RELATED WORKS

International Sources of Law on Work Related Rest

Most laws on work related rest primarily have their roots to international law with the International Labour Organization (ILO) being a forerunner in issuance of Conventions. These guidelines serve to direct the behaviour of employers and employees in various countries or nations. The International Labour Organization's Conventions and Recommendations have seen ratifications by most member states who subsequently localize these global legislations into national laws for management of work-related activities involving employers and employees. The effectiveness of international law is evident when ratified by member states as it becomes binding on them for implementation. For member states who do not ratify these Conventions and Recommendations, they tend to be non-binding on them while for members who ratify, compliance is affected by a myriad of factors that shape state behaviour such as political will, domestic political structures and the alignment of international obligations with national interest [4]. Societal values, cultural norms and historical experiences may impact a state's willingness to comply with certain international laws, particularly in areas such as human rights and social policies [5].

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In making specificity to international organizations which make laws to ensure work related rest and/or breaks with regards to employers and employees, the International Labour Organization (ILO) provides regulations for compliance and guidance to member states.

These instruments address various aspects of work schedules and aim to regulate and improve conditions for workers. Some notable ones include Hours of Work (Industry) Convention, 1919 (No. 1) which focuses on working hours in industrial sectors, Hours of Work (Commerce and Offices) Convention, 1930 (No. 116) which addresses working hours in commercial and office settings, Forty-Hour Week Convention, 1935 (No. 47) advocates for a standard 40-hour workweek, Reduction of Hours of Work Recommendation, 1962 (No. 116) which provides guidelines for reducing working hours, Weekly Rest (Industry) Convention, 1921 (No. 14) aimed at ensuring workers receive regular rest periods and weekly Rest (Commerce and Offices) Convention, 1957 (No. 106) which address work related rest issues applicable to commerce and office workers.

The Hours of Work (Industry) Convention, 1919 (No. 1) establishes that the working hours in industrial undertakings (excluding family-only businesses) should not exceed eight hours per day and 48 hours per week. The Forty-Hour Week Convention, 1935 (No.47) and Reduction of Hours of Work Recommendation, 1962 (No. 116) as instruments set out the principle of the 40-hour work week while ultimately, Weekly Rest (Industry) Convention, 1921 (No.14) and Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106) provides general standards that workers shall enjoy as rest periods for at least 24 consecutive hours every seven days [6].

International regulations recognize long term break from work under International Labour Organization's Convention, 132 - Holidays with Pay Convention (Revised), 1970 (No. 132). Primarily, this convention stipulates that every eligible individual to whom this convention is concerned has the right to receive an annual paid vacation of a specified minimum duration [7]. The phrase to "whom this convention applies" is elaborated as applying to all employed persons with the exclusion of seafarers [8]. In cases where this is deemed necessary and relevant, the competent authority or relevant mechanisms within a country may, after consulting with employers' and workers' organizations, exempt specific categories of employed individuals from the provisions of this Convention. Such exemptions may be due to significant challenges related to enforcement or legal and constitutional issues associated with their employment [9]. The ILO Holidays with Pay Convention (Revised), 1970 (No. 132), provides for the right of workers to enjoy a three-week holiday in the form of leave each year while providing a proportionate leave with pay for workers who have been with an employer but not long than six months. The convention provides for the possibility of an employee to proceed on two weeks of his (ejusdem generis) annual leave at a goal without interruption.

The period for an employee to exercise his right to an annual leave is left to the discretion and prerogative of the employer in consultation with the employee or his or her agent. Regulations ensuring rest breaks for workers are not confined to short intervals alone; they also extend to medium or long-term durations, as subjectively perceived by the relevant worker.

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Ghana's Domestic Sources of Law on Work Related Rest

Drawn from international sources, Ghana's laws on work related rest stem from Conventions and Recommendations which have been ratified and produced in sections of work-related standards or laws such as the Labour Act, 2003 (Act, 651). The Labour Act, 2003 (Act, 651) is the prime source of domestic regulations providing for the management of rest breaks at work. The Labour Act, 2003 (Act, 651) is a valid source of law in accordance with Ghana's sources of law as per Article 11(1) (b) of the 1992 Constitution of Ghana. The laws of Ghana shall comprise enactments made by or under the authority of Parliament established by this Constitution [10]. The Labour Act 2003 (Act, 651), being an Act of the Parliament of Ghana thus, conforms as a valid source of law in this respect. Matters of rest breaks are highlighted under Part IV (General Conditions of Employment). Sub-part I enshrines annual leave with pay and most sections under this sub-part of the Act are drawn from the International Labour Organization's Holidays with Pay Convention (Revised), 1970 (No. 132). Sub-part II which elaborates hours of work, is in consonance with the International Labour Organization's Convention on Hours of Work (Industry), 1919 (No.1) and Convention on Hours of Work (Commerce and Offices), 1930 (No.116). Sub-part III of Labour Act 2003 (Act, 651) stresses on rest periods.

Leave Entitlements

Section 20 (1) of Ghana's Labour Act, 2003 (Act 651) advances rights of workers to enjoy rest breaks in the form of leave with pay in any calendar year of continuous service. In any undertaking, every worker is entitled to not less than fifteen working days leave with full pay in any calendar of continuous service [11]. The provision restricts the minimum days of leave entitlement to fifteen (15) days but places no bar on the maximum days to be prescribed as days for leave entitlement of a worker. The maximum days to that effect could be more than fifteen days and may be determined by the employer and/or in consultation with workers or their agents. The provision's stipulation of full pay means an employer would be entitled to same remuneration during the leave period as if he or she was at work. The expression "full pay" means the worker's normal remuneration without overtime payment, including the cash equivalent of any remuneration in kind [12]. In simpliciter, a worker proceeding on leave does not deprive him (ejusdem generis) of monthly remuneration.

In the case of Isaac Osei Nyantakyi v Ghana Grid Company [13], The plaintiff began working for the Volta River Authority (VRA) on December 1, 1989**,** initially as an Assistant Engineer. Over time, he climbed the ranks and eventually became the Area Manager in charge of the Transmission System in Kumasi. Later, he was transferred to Takoradi in the same managerial role. In 2005**,** GRIDCO was established as a subsidiary of VRA through an Act of Parliament. Consequently, in July 2008**,** the plaintiff was transferred from VRA to GRIDCO. This transfer was based on the principle of service continuity**,** ensuring that he retained his seniority and continued to enjoy the same conditions of service that applied at VRA. However, events took a turn. On August 19, 2009**,** there was a publication about the plaintiff in the Insight News Paper**,** prompting a response from him. Subsequently, on January 22, 2010**,** the Acting Director of HR instructed him to proceed on leave, which he duly complied with. While on leave, the plaintiff was summoned by the CEO to his office. There, he received a

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letter dated July 14, 2010, terminating his employment. The plaintiff contested this termination, arguing that it did not align with GRIDCO's conditions of service for the Senior Staff Association regarding his annual leave for 2007 and 2008. He believed that the termination was unfair and wrongful. Taking legal action, the plaintiff filed a writ of summons along with a statement of claim against the defendant. In the subsequent judgement, Asuman-Adu, J ordered GRIDCO to make a cash payment for the accrued leave in 2007 and 2008, after ultimately concluding that the plaintiff's termination was indeed unfair.

However, the Labour Act, 2003 (Act 651) posits that an employer upon dismissing an employee has the right to forfeit payment a worker is entitled in respect to his or her leave days [14]. In Kobea v Tema Oil Refinery, dismissal was explained by Twum, JSC in the following words: "…At common law, an employer may dismiss an employee for many reasons such as misconduct, substantial negligence, dishonesty, etc.… these acts may be said to constitute such a breach of duty by the employee as to preclude the further satisfactory continuance of the contract of the employment as repudiate by the employee…there is no fixed rule of law defining the degree of misconduct that would justify dismissal" [15].

In Lever Brothers Ghana Limited v Dankwa, the Court of Appeal held that, an employer possesses the authority to terminate an employee's employment immediately, typically when an employee is caught red-handed committing an offence. Thus, the discretionary power of an employer to make decisions allows them to decisively make a response to an employee misconduct [16].

From the exposition made supra, it is evident that termination of an employee's contract of service does not automatically deem forfeiture of obligation to pay entitlements due him or and in the spur of such an event where the right to exercise termination and/or forfeiture to pay the employee remain shrouded, resort has to be made to a competent court of judicature to ascertain whether the affected who has been asked to proceed on leave on grounds that, an investigation is being conducted is entitled to a remuneration and leave entitlements while on leave or unlawfully dismissed.

In identifying an employee's right to exercise leave, the Labour Act, 2003 (Act 651) bars an agreement to forgo leave [17]. This indicates that, it is compulsory for workers to embark on work related leave. Notwithstanding the above, section 32, Labour Act, 2003 (Act 651) provides the ability to forgo leave to persons in an undertaking which involves only family members [18].

Misconception on Suspension as an Avenue to Rest

Interestingly, an action taken by an employer to suspend employee for violation of a code of conduct could be perceived as a source of rest break for a worker but, realization of suspension by an employee poses an imminent threat to termination of his contract of service since in most cases, suspensions are products of corporate violations. Rationally, an employee may not wish to be suspended since it has the potency of damaging worker's corporate reputation, affecting job security or creating prejudice in some cases. The thought that suspension is a source of rest

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for workers, presents a notion to employers that they should be meted with pecuniary sanctions, but this is not necessarily straightforward. The automatic pecuniary sanctions to suspensions are unlawful pursuant to section 69(1), Labour Act, 2003. An employer is barred from making any deduction in the form of a discount, interest or any other similar deduction of a remuneration to made in advance to a worker for a work done for a period.

Section 69(1)(b), Labour Act, 2003 (Act, 651) posits that "an employer shall not impose a pecuniary penalty upon a worker for any whatsoever; or deduct from remuneration due a worker, any amount whatsoever, unless the deduction is permitted by section 70 or by any other law or is by way of repayment of an advance of remuneration lawfully made by the employer to the worker" [19]. The Ghanaian position on suspensions and pecuniary sanctions may seem absurd to a non-legal personality but this same position is being upheld at common law.

In the case of Muller & 5 Others v Chairman of the Ministries, Howie J asserted that; "The implications of being barred from going to work and pursuing one's chosen calling, and of being seen by the community round one to be so barred, and not so immediately realized by the outside observer and appear, with respect, perhaps to have been underestimated in Swart and Jacobs cases. There are indeed substantial social and personal implications inherent in that aspect of suspension. These considerations weigh as heavily on South African as they do in other countries" [20].

In the case of Korley v Anim & Others, the Court held that, suspension of the employee should not be accompanied by any pecuniary sanction. The suspension of the applicant coupled with receiving half of his salary at the end of the month was deemed to be a clear breach of his common right to be paid his full salary [21]. It was averred that payment of half of his salary infringed section 9(b), Labour Act, 2003 (Act 651) and Article 24 (1) of the 1992 Constitution. These laws guaranteed his salary while he remained a full-time employee of the Ghana Education Service.

Thus, the notion by some employers and Human Resource Persons that suspension is an automatic rest break for workers and thus, need to be always applied with pecuniary deduction is not in conformity with legal principles as cited supra.

Interruptions to Work Related Rest

The Labour Act of Ghana posits that, a worker's entitlement to leave which is a form of rest break shall not be affected by public holidays or an absence facilitated by sickness confirmed by a medical practitioner or an absence due to pregnancy. Ghana recognizes thirteen (13) statutory public holidays [22]. Employees while enjoying their leave days should not be deprived of these holidays. Notwithstanding, where an employer deems an activity as an urgent necessity, he can interrupt the leave enjoyed by the worker.

Rest Periods

Ghana's 1992 Constitution per article 24 provides for the economic rights of its citizens. This right to that effect is one, also for the enjoyment of a microcosm of the population who are

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workers. The right enshrined under article 24 (1) advances the right of a person to work under a condition that is satisfactory, highly safe, health and coupled with an ability to make receipt of an equal remuneration for an equal work executed without prejudice or distinction of whatsoever kind. [23]. Article 24(2) advances an assurance of adequate rest, leisure and a practicably reasonable limitation of working hours and periods of holidays while guaranteeing the payment of the remuneration of a person on a public holiday. [24]

Elaborating the relevance of a satisfactory condition of work in a working environment for workers, the 1992 Constitution of Ghana per Article 16 provides for protection from slavery and forced labour. Thus, the deprivation of a worker's right to enjoy his (ejusdem generis) rest or leisure post engaging in a recommended hours of work could amount to forced labour. [25].

Sections 41- 44, Labour Act, 2003 (Act, 651) advances and make specific declarations on rest as introduced by Article 24(2), 1992 Constitution. Section 41(1) of Labour Act, 651 which highlights daily rest period, states that without prejudice to section 40, a continuous minimum rest of a twelve hour duration between two consecutive working days shall be enjoyed by a worker while the daily rest of a worker involved in a seasonal undertaking may be less than ten hours but not exceeding twelve hours over a period of minimum sixty consecutive days in a calendar year [26]

In Ghana, it is common to identify violations of workers right to rest from work especially in the private corporate sector. Formal workers in Ghana's private sector in most cases are found to have a rest period of twenty-four hours in every seven days of normal working hours contrary to section 42 of the Labour Act, 2003 (Act, 651) which states that;

"A worker shall in addition to the rest periods provided in sections 40 and 41, be given rest period of forty-eight consecutive hours, in every seven days of normal working hours, and rest period may, for preference, start from Saturday and end on the Sunday following and shall wherever possible be granted to all of the workers of the undertaking [27].

The phrase "may, for preference" indicates that the forty-eight consecutive hours of rest can fall within any other day aside Saturday and Sunday as explicitly stated. The enjoyment of this forty-eight-hour rest period shall not be interrupted by a public holiday.

3. METHODOLOGY

The manuscript utilized content analysis in identifying rights and obligations of workers. Through this approach, rest in an ordinary sense was considered while evaluating the legalities associated with rest for workers. Thematic qualitative data on rest, leave entitlements, rest periods, rest interruptions and misconceptions on rest were gained from legislative sources which include ones from Ghanaian and common law perspectives to ascertain whether work related rest exist as an employee's right or favour made by an employer.

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4. RESULTS AND DISCUSSION

Results

The manuscript resolved the question about work related rest whether being an employer's favour or an employee's right by making precise references to legislative sources from international and Ghanaian legal domains. The manuscript ascertained work related rest as being a right legally recognized by both domestic and international sources and an obligation owed an employee by an employer. Misconceptions mostly held by employers that a corporate sanction such as suspension is a form of rest and should be meted with a pecuniary deduction was also identified as being not necessarily straightforward. Worker's leave entitlements were also identified as compulsory except for exception cited by Ghana's Labour Act, 2003 (Act 651). It was also identified that, workers upon enjoying their rest from work should not be interrupted except for exceptions identified by provisions of the Labour Act, 2003 (Act 651).

Discussion

In developing countries such as Ghana, regimes of limited work opportunities create an impression among most employers that, an accepted job offer translates to a corporate favour. To that effect, it is highly evident to witness rights of workers being violated especially in the private corporate sector of Ghana. Specifically, right to rest from work in the form of holidays, weekly rest and annual leave tend to be the most violated ones.

Consequently, in most cases, these violations of employees' rights enshrined in both international and domestic legislative constructs often remain unchallenged at both workplaces and courts. In the private sector, it is also common to identify workers having their weekly rest break of 48 hours as per section 42, Labour Act, 2003 (Act 652) being restricted to 24 hours. While legally improper, socially destabilizing and ergonomically unsafe, the urge among workers especially in the private sector to institutionalize an action against an employer at the court or any other prescribed agency is often met with apprehension of losing their source of livelihoods post determination of cases presented to these competent adjudicating bodies.

Aside employers making restrictions to workers enjoying their rights to rest, most Ghanaian workers in contemporary times tend to forgo their leave in exchange of a pecuniary gain but this action is restricted by the Labour Act, 2003 (Act 652) with the provision identifying rest as a highly important element of workers' functionality at the corporate level. It is therefore a legal right of a worker to enjoy rest provided by the Labour Act, 2003 (Act 652) unless where exceptions have been provided. It is imperative for employers to also consider that, while inflicting sanctions to their workers for violation of company protocols, it should be done in consonance with the law in order not to make pecuniary sanctions an automatic affiliate of suspension as a corporate sanction.

5. CONCLUSION

Is rest from work an employer's favour? No. A right of an employee? Yes. Thus, its scope needs to be enjoyed by workers without limitations especially for workers in Ghana's private corporate sector.

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