



KSL PARALEGAL PROGRAM -PTP 209

ELEMENTS OF EMPLOYMENT LAW

William Agan
Advocate/Lecturer &
Patent Agent

EMPLOYMENT RELATIONSHIP-LAST SESSION

Last session in a nutshell:

- Summary dismissal
- Unfair termination/wrongful dismissal

REDUNDANCY & TERMINATION OF THE EMPLOYER EMPLOYEE RELATIONSHIP

- Termination sections 35 to 37 of the Employment Act 2007
- Redundancy section 40
- Remedies for wrongful dismissal or unfair termination
- Certificate of service

TERMINATION UNDER SS 35 TO 37

S 35. Where the agreement is to pay wages:

- daily, at the end of a day without notice,
- for less than a month or for a month, at the end of that period or twenty eight days with notice.

Entitlement of an employee

- service pay

(except where such an employee is a member of any scheme established under the RBA; or the NSSF; or a scheme established under a collective agreement; or any other scheme established by the employer whose terms are more beneficial to the employee).

TERMINATION UNDER SS 35 TO 37 CNTD

S 36 “In lieu of notice”:

Root: The word *lieu* originally comes from the **Latin locus, meaning "place,"**

Word “*lieu*” means: **in-lieu-of, instead, place, stead, substitute, untaken, position and pursuance.**

Meaning under s 35 (1) (c)

Payment in Lieu of Notice simply means **payment instead of notice.**

By virtue of Section 35 (1) (c) of the Employment Act, 2007 you are entitled to a month's notice.

Instead of being given the one month notice, your employer should pay you immediately

TERMINATION UNDER SS 35 TO 37 CNTD

Section 37 :

- where a casual employee worked for **more than one month**, or
- assigned work that cannot be reasonably completed **in a three month period**,
- such casual employee's contract shall be deemed a contract where wages are **paid monthly** for the purpose of the payment of **service pay**.
- a casual employee who works for **more than two months** shall be deemed to be entitled to terms of service as if he had been employed other than as a casual employee.

TERMINATION UNDER SS 35 TO 37 CNTD

Probation:

- An employee on a probationary contract may not be hired for more than a period of twelve months as such.

REDUNDANCY



REDUNDANCY

What constitutes grounds for redundancy?

- The need for the worker has diminished or ceased
- New systems in the workplace.
- The job no longer exists because other workers are doing the work you carried out.
- The workplace has closed or is closing down.
- The business moves.
- The business is transferred to another employer.

REDUNDANCY SECTION 40

Meaning of redundancy:

“the state of being no longer in employment because **there is no more** work available”.

Conditions for redundancy:

a) the employer has given notice (where the employee belongs to a trade union, to the union), the employee and the labour officer of the intended redundancy at least a month prior to the redundancy;

b) the employer has selected the employees to be made redundant with due regard to the seniority in time and to the skill, ability and reliability of each employee affected by the redundancy;

REDUNDANCY SECTION 40 CTD

- c) where an employee is not a member of a trade union, an employee is not disadvantaged by the fact;
- d) where leave is due, paid off the leave in cash;
- e) employer has paid a redundant employee not less than one month's notice or wages in lieu of notice; and
- f) the employer has paid **severance pay at the rate of fifteen days pay for each completed year of service.**

REMEDIES FOR WRONGFUL DISMISSAL/TERMINATION

Labour officer may recommend:

- a) payment of any sums that would have been paid had notice been given;
- b) where the termination ended before wages fell due, the proportion of the wages due and any other loss consequent upon the dismissal and arising between the date of dismissal and date of expiry of notice; or
- c) the equivalent of a number of months wages not exceeding twelve months based on the gross salary or wage of the employee at the time of dismissal; subject to statutory deductions;
- d) order the reinstatement of an employee and treat the employee as if he had not been dismissed, and to re-engage him in work at the same wage;

CERTIFICATE OF SERVICE

Each employee is entitled to a certificate of service unless the employment has been for less than four weeks.

The certificate of service ought to contain:

- name and address of employer;
- name of the employee;

CERTIFICATE OF SERVICE CTD

- date when employment commenced;
- the nature and usual place of employment of the employee;
- date when employment ceased and any other particulars as prescribed.

Offence:

Failure to give an employee a certificate of service is a criminal offence, punishable by a fine not exceeding one hundred thousand shillings or a jail term not exceeding six months.



THANK YOU - Q & A