



## What is Unfair Labour Practice?

By Geoffrey E. Odongo



Under Article 41 of the Constitution, every person has the right to fair labour practices. However, both the Constitution and the Employment Act do not define fair or unfair labour practices. It is a broad term that is usually left to the courts to define and determine the scope, content and extent of what would qualify to be an unfair labour practice. Where the court finds that during termination, the employer's conduct amounted to an unfair labour practice, it follows that the termination was unfair and the employee is entitled to compensation. Below is a list of scenarios that the courts have previously found to constitute unfair labour practice.

**1 Denying an employee payment during the period suspension, if at the end of the disciplinary process the employee is found innocent.** Suspension of an employee is meant to pave way for investigations into alleged misconduct of the said employee. Where the employee is found innocent, the employer ought to pay him for the period of his suspension. Similarly, it is an unfair

labour practice to expect that an employer pays the employee where the employee is found culpable of the alleged misconduct.

**2 Exposing staff to employer's unilateral adverse decisions in circumstances of valid and legitimate grievances:** The court found it to be an unfair labour practice where an employer had the same procedure for dealing with grievances between employees and the employer, employees and clients and amongst employees themselves and suggested that a sound grievance procedure ought to cater for each category of disputes.

**3 Constantly holding an employee on acting capacity without any substantive appointment**

The Employment Act does not give the period within which an employee should be in acting position. However, the period should not be unreasonably long.



**4** **Limiting or attempting to limit the right of an employee to dispose of his wages in a manner which the employee deems fit.** An employee should be free to use his wages as he pleases. The courts considered it to be an unfair labour practice to dictate an employee's use of his salary where an employer required an employee to enroll for a course at the employee's expense with the promise to refund 50% of the costs upon successful completion.

**5** **Redeploying an employee as a disciplinary measure:** An employer has general prerogative to redeploy employees. However, where such redeployment is a sanction arising from a disciplinary process or without contractual

or statutory basis, the redeployment would amount to an unfair labour practice. This also includes placing an employee on a new round of probation after they have served for several years without any legal or contractual basis.

**6** **Suspension for an indefinite period of time:** Any administrative or disciplinary action is expected to end. An employee ought to know the period of their suspension.

**7** **Withholding an employee's original academic certificates without any reasonable explanation.**