

# Legislations regarding working conditions law employment essay

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There is an estimated 105 million<sup>[1]</sup> of people working in a country other than their own. Most of these people come from under developed or developing countries. In 2011, migrant workers earned a total of 4440 billion, of which 4350 billion was transferred to developing countries in the form of remittances. These figures show the economic contribution of migrant workers to the countries of origin. However, countries of destination also benefit from such labor. Manpower is obtained for tasks which locals refuse to carry out, the rates are very often lower than those paid to nationals. It is useful in cases of scarce supply of local labor. Global development would slow down without those people. Therefore, receiving countries should make an effort to ensure that the rights of these people are protected, and that the latter work in good conditions without any discrimination.

### **Section 1 : Legislations regarding working conditions**

In Mauritius, the ERA 2008 and the OSHA 2005 provide for some of the regulations to be respected at work. They cater for the rights and duties of both employer and employees, including migrant workers. In India the Inter-State Migrant Workmen (Regulation of employment and conditions of service) Act 1979 regulates the working conditions of migrant workers in the country. The Act applies to every company employing five or more migrant workers. The ERA 2008<sup>[2]</sup> provides for the various rights of workers at work and the conditions under which they are subject to work. Among others, it provides for the freedom of association, fundamental rights of employers and workers, right to collective bargaining, resolving labour disputes.

## **Sub-section 1 : Normal working hours**

Section 14[3] of the ERA 2008 provides for the normal working hours of a worker. A normal day's work shall consist of 8 hours, but such number of hours shall not exceed 90 in a fortnight without additional pay. Section 14(7) of the Act provides that a worker shall be asked to recommence work only after a lapse of 11 hours since he ceased work. The Act also provides for 20 working days annual leave for every worker who has been in continuous employment for a period of 12 consecutive months[4]. However, migrant workers very often work much more than the lawfully permitted number of hours, especially those in the EPZ sector, where most of the expatriates are employed. According to the employers, the workers request for additional working hours to earn more. They rarely take any days off work as they barely have any social life. The contract of employment of the CMT includes a clause which requires the workers to work 70 hours per week, with no holidays during the first year of employment.

## **Sub-section 2: Overtime**

While some workers reported an excess of overtime, others complained about not being able to work enough hours of overtime and being unable to earn the expected amount of money. Workers in the EPZ work 45 hours per week and a 10 hours of compulsory overtime. Bangladeshi workers at the MEK (Import and Export) Ltd earning an average monthly salary of Rs3500 sought additional overtime hours to be able to earn more[5].

### **Sub- section 3 : Overtime remuneration**

The ERA 2008 also specifies the way overtime shall be remunerated. A worker shall be notified 24 hours in advance of the work to be performed. In addition, no worker shall be forced to carry out overtime. Any worker who does not wish to carry out overtime shall notify its employer at least 24 hours in advance. According to the Mauritius Labour Congress, 10 hours of overtime[6]a week is compulsory in certain textile factories. Any overtime shall be remunerated at one and a half times the notional rate per hour for every hour of work performed. Some workers reported unpaid overtime and less favourable payment than nationals. The latter often take part in strikes to show dissatisfaction. Illegal manifestations cause the deportation of the workers, due to which most of the migrants abstain from any complaints. However, the American case law Tripp V. May et al[7], the US court of appeal held that the employer shall not be held guilty for any unpaid overtime provided it is proven that the act was in good faith and that he had reasonable grounds for believing that this act or omission was not an infringement to the Fair Labor Standards Act.

### **Section 2 : Rate of pay**

Section 20[8]of the ERA 2008 provides for an equal payment to all workers for work of equal value. Every employer shall ensure that the remuneration of any worker shall not be less favorable than that of another worker performing the same type of work. Nationals and foreign workers should be remunerated the same amount for similar tasks. According to the 2011 NRB, unskilled workers in the EOE shall be remunerated a minimum of Rs607

(\$21) per week, while an unskilled worker outside the EOE shall be paid at least a weekly pay of Rs749 (\$27).

### **Sub- section 1 : Unsatisfactory salary**

The NESC points out the unequal pay provided to Chinese migrant workers. Chinese workers in the EPZ sector earn a low rate of 120-150 dollars per month. . Workers at Trend Clothing limited earn an hourly rate of Rs 16. 57[9]. On the 10 October 2007[10], 448 Bangladeshi workers from the CMT factory had a strike to demand a rise in their pay from Rs5700 to Rs 10, 000, for the same hours of work. It is one of the reason why these workers prefer to work overtime and save a little money to send back home. According to the Sunday Times in 2007, migrant workers receive only up to 22pence to 40pence per hour, which is about 40% less than what is obtained by local workers.

### **Sub-section2 : Delayed payment**

Migrant workers are often faced with delayed payment from the employers. Some workers prefer to remain silent due to the fear of being deported, while others choose to show their dissatisfaction. On the 06 March 2008[11], 172 Bangladeshi workers of the Chentex factory reported not having received their pay for December 2007, and having received only half of the pay for January in February. The EAT held in the case of Potter V Hunt Contractors Ltd[12], that any deduction of wages shall be authorised in writing. In the case of Union of India V. Kameshwar Dubey[13], the ICJ held that the intention of the employer should be considered when determining whether there has been any delayed payment or not.

### **Section 3 : Safe working conditions**

Workers in Mauritius also have the right to be protected from any reasonable harm at work. The OSHA 2005 applies to each and every worker in Mauritius, be it in the private or public sector, nationals or expatriates, or self employed. It includes new hazards which have cropped up with the advent of new technology.

#### **Sub- section 1 : Duty of care of the employer**

The Act engages the responsibility of the employer where the security of the workers is concerned. Section 5[14]of the Act provides that it is the responsibility of the employer to ensure the safety, health and welfare of the employees. The employer has to provide an environment which is safe and without risks to the health of its employees. The latter should be provided with adequate training, health and safety information, and sufficient protective equipment. On proof of the contrary, the employer shall commit an offence and shall be liable to penalties.

#### **Sub- section 2 : Reasonable precaution of the employee**

The OSHA also provides for duties of employees. The latter are expected to take reasonable care for their own health and safety . The US case law *Steve Kozman V. Trans World Airlines Inc*[15], the US court of appeals held that in the case the worker had knowledge of the danger involved in the work, and has nevertheless consented to do the job, the employer shall not be held guilty of any eventual accidents. On the other hand, if the worker was not himself negligent and did not assume the risk of what befell him, then the employer shall be held liable for any injuries caused to the worker.

### **Sub- section 3 : Compensation**

The Korean Labor Standards Law allows an employee to cancel an employment contract in the case differences between the actual working conditions and employment contract are noted, and also enables the worker to ask for compensation. In addition, employers have to provide safety education to its employees for a minimum of 2 hours per month. Under UK law the employee has to fill a personal injury claim and has to prove the negligence of its employer or fault of a third party. In Mauritius workers are compensated according to the Workmen compensation for accidents ILO convention.

### **Sub- section 4 : Work related accidents**

In the year 2008, there has been 164 registered work related accidents compared to a number of 159 in 2007. The US recorded a number of 759 fatalities in the construction industry for the year 2011. Most of the accidents reported are in the construction sector, where the workers are often provided with insufficient safety at work. One of the objective of the DWCP is to reduce work related accidents by 5% in 2014. Korea has an industrial accident compensation insurance policy offered by the MoL. The worker who is injured at work is offered a compensation and has its medical fees paid by this policy, regardless of whose fault is the accident. According to a research carried out by Jeppe[16], most migrant workers in Mauritius find the working conditions satisfactory. The latter nonetheless find their accommodation to be in a despicable state.

## **Section 4 : Accommodation**

Lodging has since forever been a major problem for migrant workers, who usually live in dormitories provided by the employer. Included in the OSHA is the Lodging Accommodation Employees Regulations 2001 which empowers the Permanent Secretary to ensure a safe resident to employees.[17]

### **Sub- section 1 : Responsibility of employer**

It is most of the time the responsibility of the employer to provide the migrant workers free of charge, with a proper resident. In fact, the contract of employment includes a clause to clearly stipulate the provision of accommodation. The workers are provided with a place to live, but the condition in which the dormitories are is often a matter of concern for the workers. It was held in the case of Wigan Borough Council V. Davies[18], that an employer owes a duty of care towards its employees and should prevent any ill treatment.

### **Sub- section 2 : Living conditions**

Most of the workers live in packed unhygienic dormitories, with little or no sanitation. Workers at the Trend Clothing Ltd are faced with health threatening electrical system, while those at the Esquel Ltd[19] live in a cramped dormitory with very poor sleeping facilities. Same has been reported at the Candytex factory, where the workers exasperated by the living conditions preferred to quit the job. Some of them use the term 'modern slavery' to classify the way they are treated. The workers who report the degrading living conditions are most of the time faced with deportation, thereby discouraging the others from taking such action.



### **Sub- section 3 : Responsibility of employee**

However, according to an officer of the Mauritius Export Association, it is the workers which put the dormitories in such a despicable state, as the latter come from poor countries where hygiene is not an issue. The employer provides a decent accommodation which is turned into an unhygienic place by the workers themselves.

### **Section 5: Freedom of Association**

The law allows each and every worker in Mauritius to unionize, with the exception of the police and special mobile force. This includes migrant workers as well. However, the rate of unionized migrant workers remain very low. The latter are often employed on a contractual basis for a short term and find it difficult to join a trade union. Furthermore, the workers come from countries where trade union culture does not prevail.

### **Sub- section 1 : Legislations**

The Mauritian law provides workers with the choice of joining a trade union of their choice, under certain conditions[20]. The Constitution[21], the ERA 2008, the Declaration on Fundamental Principles and Rights at Work and the ILO convention on the right to organise and bargain collectively allow for a freedom of association to both nationals and migrants. The UK has the Trade Union and Labor Relations (Consolidation) Act 1992 which regulates the freedom of association of employees, while the US trade union activities are regulated by the National Labor Relations Act. The requirements for a legal strike are often very complex for the workers. The law requires a 21 day cooling period, followed by binding arbitration. The procedures can last up to

2 months. Migrant workers are often deported when they strike, either because the strike was found to be illegal or there has been a breach of contract. The court held in the case of Private Enterprises Employee's Union v. Industrial Relations Commission et Mauritius and New Zealand Dairy Entreprises Ltd, that the IRC has the power to refuse recognition of a trade union under certain circumstances. Such power has been conferred to it by the at that time prevailing legislation, the IRA.

### **Sub - section 2 : Illegal strikes**

In the year 2011 around 1055 foreign workers were deported due to participation in illegal strikes[22]. Furthermore, trade unions are sometimes dismissed by the employers, mostly in the private sector. Under the ERA 2008, an employer may dismiss a trade union if it does not represents 30% of the workforce. From 2008 to 2011, 8000 trade unions have already been dismissed. This shows the fragility of those which are supposed to protect the workers. The 2008 International Trade Union Confederation (ITUC) report stated that the rate of unionized workers in the EPZ[23]is quite low[24]mainly because employers in the EPZ intimidate workers and trade unionist had difficulties to access foreign workers in this particular sector[25]The Employment Relations Tribunal helps to solve issues arising between employers and workers, therefore, reducing the need for strikes.

### **Sub- section 3 : Reasons for strikes**

In 2007 the Clean Clothes Campaign laid down the working and living conditions of some foreign workers in the garment industry. the report talked about the cramped dormitories, the 70hours of work per week, and the

deportation of the Sri Lankans due to the protests. In March 2011 an additional number of the Santex Ltd Nepalese and Bangladeshi workers were deported for having protested. The main concerns were lack of pure water for more than three months, poor living conditions, and inadequate meal allowance of Rs 600.

## **Section 6 : Political rights**

In Mauritius, only local and commonwealth citizens are able to vote for the parliamentary elections. Right to vote is given only to those having citizenship. Therefore, foreign workers in the country are not allowed to vote during local elections.

### **Sub- section 1 : International comparison**

On the other hand, countries like the Sweden, Ireland, Denmark and Norway, migrant workers have the possibility to participate in national elections after a period of 3 years of legal residence in the country. Netherlands provide for such a right to its migrant workers but after a period of 5 years of legal residence. Even countries like Austria, France, and Germany, who have signed the ICCPR, have applied reserves so as to restrict political activity of foreign workers in the country.

## **Section 7 : Limitations of labour laws**

Mauritian laws regulate to a certain extent the treatment offered to migrant workers in the country. The latter form an integral part of the labour market and contribute largely to the economy. However, loopholes do exist in the legislations, thereby the number of protests still being held by the workers.

In 2002, international producers like the Levi Strauss has in the past stopped

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production in Mauritius, because it claimed that the country is unable to enforce its own legislation when it comes to migrant worker rights. Such incident has surely had its impact on the country, its reputation, and most certainly, the economy.