**EMPLOYER’S GUIDE**

**BOOKLET**

**1**

**15 RULES OF ENGAGEMENT**

**IN**

**LABOUR LAWS**

**How to engage an employee and create good labour relationship**

**Advocate Isaack Zake & Dawson Zake**

**15 Rules of Engagement in Labour Laws**

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9. The Workers Compensation Act, Cap.263 R.E.2015.

**Subsidiary Legislation**

1. The Employment and Labour Relations (Code of Good Practice) Rules, G.N. No.42 of 2007

**Other Books by the Author**

Adv.Isaack Zake has also published the following books

1. Tathmini ya Ndoa Miaka 5 Makosa 50
2. Maana ya Kazi
3. Employer’s Common Mistakes
4. Je, wewe ni Mwajiri au Mwajiriwa?
5. Viwango vya Ajira
6. Haki za Kiajira
7. Usitishaji wa Ajira
8. Sababu na Utaratibu wa Usitishaji Ajira
9. Offences and Penalties in Labour Laws

**About the Booklet**

This booklet is among the series of books on Employer’s Guide designed by TAACIME to cater for the Employer’s need regarding various challenges involved in labour relations.

Therefore, the first booklet in the series is all about how an employer can engage an employee for a particular work. It has to be borne in mind that most of the problems originates from the way the parties commence their relationship.

This booklet lay down 15 Rules to be adhered by the employer while making arrangement of engaging a new employee. Together with the rules, the writers have attached sample forms and other necessary tools to help the employer and make this book user friend. These rules are product of the law and practice on labour relations. Abiding to these rules would help to eliminate a great number of problems that would land at workplace if they are not complied.

Therefore this booklet will guide the employer how to work step by step in engaging an employee in a legal manner and acceptable standards of the labour laws.

**Advocate IsaackZake**

**Director of Legal & Public Relation TAACIME**

**September 2019**

**About TAACIME**

TAACIME is a registered Association of Employers in Tanzania Mainland since 2008. TAACIME is short form of ‘TANZANIA ASSOCIATION OF AGRICULTURE, COMMERCE, INDUSTRY and MINING EMPLOYERS’

TAACIME is an autonomous, non-profit making employer’s organization financed by, among other, the members’ subscription fees and other association projects. The association is dedicated to promote the best practices and ideas in the field of Labour and Employment, more so in industrial relations, welfare arrangement and managing employees’ relations in an orderly manner and serve the best interest of our country’s economy and sustainable development.

**Our Vision**

To be collectively strong, efficient and effective Employers’ VOICE in Tanzania.

**Our Mission**

TAACIME strives to provide specialised labour solutions to our clients through disseminating labour knowledge and sound advice and compliance.

**Our Goals**

* To provide necessary knowledge and guidance to the responsible personnel at work place in compliance of labour laws;
* To bring together and develop harmonious relations between employers and their employees within their organizations so as to increase productivity;
* To reduce or eliminate causes of labour disputes at workplace so as the enterprise can focus only on production and rendering service to the general public.

**Our Services**

TAACIME offers various range of services such as;

* Representation of members in different forum
* Consultancy and Counselling services
* Training Programme
* Legal Representation
* Labour law education

All the employers are encouraged to join and promote this prosperous Association.

*‘We strive to prevent labour dispute at work place and promote harmonious working relations’*

For more information and clarification, please do not hesitate to contact the undersigned immediately.

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**DEDICATION**

We entirely dedicate this work to all the Employers, may you find guidance in these pages for improvement of your relationship with the employees.

# Introduction

One of the areas that most of the employers are not well versed is on the engagement of employees. Employers tend to administer all the related work towards the engagement of the employees without consulting labour lawyers, industrial relations officers or human resource experts. Engagement of an employee is the first step that gives rise to employment relations. If this is not properly handled, may attract a lot of problems in an organization and in turn may affect its productivity and business performance. The casual or informal kind of relationship created earlier, in future tend to be detrimental to the employers.

There are number of mistakes associated with the way the employers engage employees in various areas of work and thus create labour disputes when termination occurs. Therefore it is highly recommended for an employer to follow the laid rules of engagement to minimize the chances of creating labour problems in future.

We have witnessed most of the employers engage an employee without clear terms of employment, without issuing a written agreement so as to ascertain the type of contract, without proper maintenance of records of employee and detailed particulars of the employee concerned etc. All these anomalies give rise to potential labour dispute in future if not addressed in time.

In this booklet the authors through research and detailed analysis in law and practice have demonstrate the 15 Rules of Engagement in employment relationship that will guide the employers when making a decision to employ an employee. Following these rules will reduce the chances of creating labour disputes in future as the employer will be well prepared with all the basic requirements in the process of engaging an employee.

Therefore, we invite you to read carefully the pages to follow and discover the laid rules that can assist you while making the decision to employ or being employed in an entity or organization.

# Rule 1

# Identify the Need to fill the Vacancy

The first question to be pondering in the mind of an employer before hiring an individual to his place of business should be *‘Do I real need to fill the vacancy?* If the answer is affirmative then the second questions should be *‘Why?’*

This is the first step that an employer needs to take before making any arrangement of engaging an employee or any other person to work with. The basis of making the decision of employing an individual, lies upon the organization structure, which embodies the vision, mission and the goals of the organization.

It has been a habit of some employers not to make inquiry as to whether there is a need of an individual to occupy a certain position at the workplace. Sometimes vacancies or positions are created to accommodate some individuals who are not really important for furtherance of the organization goals. This shows how the leaders are not aware where the organization is heading to or its vision.

It has to be borne in mind that hiring an employee, it means the increase of organization expenses, unless there are real and genuine reasons for doing so, for the benefit of the organization employing someone must be really scrutinized.

The potential employer must make sure that a thorough research is done before making any decision of engaging an individual for a vacant position. The employer has to ask himself questions if he really needs an employee to fill that vacancy or not. If such employee is needed,one has to provide the really reasons or the value that the employer would expect to be added by thenew employee. If all these questions and others are answered affirmatively, it is then an employer would proceed to other steps for engagement. Employers should not make a decision to engage an individual as anemployee without ascertaining if there is a need inthe organization for a particular person.

# Rule 2

# Decide the Nature of Contract

The second question that the employer needs to ask himself is *‘to what extent the services of the potential employee are needed?’*

This is a second step that leads to the engagement of an employee by the employer. After having a good reason and an unavoidable need to hire an individual, an employer must decide the nature of contract that he needs to engage the other person. The question as to what type of contract the employer needs to use for the engagement depends on the extent to which the services needed by the employer from that person. The Employment and Labour Relations Act, No.6 of 2004 recognises three types of contract of employment which are at the disposal for the employer to create employment relationship. Section.14 (1) (a) - (c) of Employment and Labour Relations Act, Cap.366

|  |
| --- |
| *(1) A contract with an employee shall be of the following types:-*   1. *a contract for an unspecified period of time;* |
| 1. *a contract for a specified period of time for professionals and managerial cadre;* |
| 1. *a contract for a specific task.* |

The three kinds of contract of employment can be used by the employer depending on the needs he has for his organization. An employer can decide to use;-

* A contract for unspecified period of time – Is a kind of contract that is termed as pensionable contract that starts and ends when an employee reaches the age of retirement thus 55 years optional or 60 years compulsory.
* A contract for specified period of time – Is a kind of contract that is reserved for the posts that require professionals and managerial cadres. An employer has the option to issue this kind of contract for a year or two years or three etc., depending on the need. The contract for period of time must not be less than twelve months.
* A contract for specific task – Is a kind of contract whereby an employee is hired to do certain task and be paid upon its completion. The Labour Court, on decided cases, termed this kind of contract as daily pay contract.

It is important to note that each kind of contract attracts different sets of obligations to the employer. The longer the term of contract the more the responsibility on part of the employer and the more complex it becomes to terminate the contract. In a case where the employer terminates the contract of employee who was engaged on a specific task, it is more likely, that the employer will get lesser punishment unlike the consequences attached to a contract for unspecified period of time if termination is held unfair.

# Rule 3

# Selection of a Suitable Candidate

The third question that employer needs to ask is *‘How do I get a suitable candidate for the post?’ In* answering this question, one needs to explore Rule 3, which is concerned with the selection of suitable candidate.

One of the areas that give challenge to the employer is recruitment. The selection of suitable and capable candidate to fill in the vacant position, must be done diligently by considering all necessary steps. The Labour law directs that on employment policy and practice there must be equal treatment of all the candidates that aspire to fill a certain vacancy. Failure to make equal level ground for potential employee, would amount to the discrimination capable of being punished under the law under Section 7 of Employment and Labour Relations Act.

Section 7 (1) (9) (a) (b) and (c) of the Employment and Labour Relations Act, No. 6 of 2004

1. *Every employer shall ensure that he promotes an equal opportunity in employment and strives to eliminate discrimination in any employment policy or practice*

*(9) For the purpose of this section –*

1. *‘employer’ includes an employment agency;*
2. *‘employee’ includes an applicant for employment;*
3. *an ‘employment policy or practice’ includes any policy or practice relating to recruitment procedures, advertising and selection criteria, appointments and the appointment process, job classification and grading, remuneration, employment benefits and terms and conditions of employment, job assignments, the working environment and facilities, training and development, performance evaluation systems, promotion, transfer, demotion, termination of employment and disciplinary measures.*

Given the current situation of competition all over the world towards offering good service in all sectors, selecting a suitable candidate does not only require academic qualification but also the inherent capabilities, acquired knowledge and skills as can be demonstrated in the talents and aptitudes of an individual.

In order to thrive and survive in the world of competition, organizations need employees who can not only get the job done but rather with creative ability to transform things at the organization and add more value. A potential candidate for a job must demonstrate above all academic qualification, previous experience from other employers; he/she is fit and keen to make a positive change in the organization. It is important for an employer to consider these factors when selecting a suitable candidate for the post. The potential employee might have no outstanding academic background but can demonstrate fine distinguished gifts toward the job.

# Rule 4

# Gather all Necessary Information

The fourth step to consider during engagement is for the employer to gather all necessary information relating to the selected employee. Most of employers neglect to gather important information from the employee and hence would lead to problem when the dispute arises. An employer must design a means to gather more detailed information about the potential employee. Personal information, physical address or permanent address, close relatives whom an employer can contact in case of anything, previous employer, referees and any civil or criminal background in relation to the employment, these are just few relevant pieces of information that can be gathered by the employer.

Due to the current situation of advance in science and technology and the social interaction of individuals throughout the world, the interaction of social media would amount to good, genuine and reliable source of information for the employer to get to know better their potential employee.

Social network is a good thing in modern development, which helps the community to interact; however there has been misuse of such media by various individuals for which they have caused misunderstanding and commotion in society. Employers need people or individuals who are responsible for their words and actions in the way they interact with the community at large.

One of the great challenges of our time is the misuse of technology in our generation, especially mobile phones. Employees spend most of time on *instagram, facebook, whatsApp, twitter* etc. and neglect work. It is important to gather all information on how such employee interact with technology and if such technology can be used to improve the performance or can have detrimental effect to your organization.

Therefore, the employer must have a technique/method to ascertain from its employees on the use of their social network and could be a good ground also for hiring such employee.

# Rule 5

# Contact all key Persons

An employer needs to contact the referees or the previous employer to ascertain the character or the representation and image portrayed by the employee.

All employers need a trustworthy employee to work with; therefore it is important to check the potential employees’ background. Most of the letters of applications are attached with CV’s of the employee indicating the referees or the previous employers. This information is very vital to the employer who wishes to engage an employee and can be useful in tracking the personality of the employee.

A good background checking of an employee would help the employer to become aware of certain behavioural aspects of the employee. All these key persons would assist you, the employer, to get a glimpse of the kind of employee you are expecting to deal with.

However such information should be considered throughout and it will shade some light on how the potential employee used to relate with the previous employer or co-workers in the areas he/she used to work.

*To get a full version of the booklet please click here*