



# THE RIGHT TO ANNUAL LEAVE AND THE LAW IN UGANDA



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The laws of Uganda both for public and private employees recognize different types of leave, namely; annual leave, maternity leave, paternity leave, sick leave, study leave and rest days on public holidays. Whereas different employers have different practices in relation to leave, the Employment Act, provides minimum thresholds for the enjoyment of leave by employees in Uganda. Different categories of leave, call for different discussions, the intention of this write-up is to discuss the various principles and considerations surrounding the enjoyment of annual leave and also discuss the circumstances under which an employee could lose the right to enjoy annual leave.



## The purpose of annual leave

The primary purpose of paid annual leave is to allow and encourage every employee to renew his/her physical and mental capabilities and to remain a fully productive employee. Employees are encouraged to request for leave during each year in order to achieve this purpose. Annual leave accords employees an opportunity to take paid time off from work for the purpose of having a break, so that they can rest and re-energise. This has increasingly become an indispensable objective in the work-life balance that is encouraged in many work spaces.

This objective is recognised in the Public Standing Orders. It is stated that the main purpose of leave is diversion, recreation, relaxation and recuperation with a view of restoration or improvement of a public officer's efficiency, effectiveness and output except as may be explicitly stated in these Standing Orders.

The Industrial Court in Uganda has further emphasized the same objective **in Mbiika Vs Centenary Bank (Labour Dispute Claim No.023 of 2014) [2018]**. It was stated that section 54 of the Employment Act, obliges employers to grant rest days during a calendar year for purposes of making employees rejuvenate and work better.

## Private employees

The Employment Act provides for paid annual leave of 21 working days to all employees at the rate of 7 days for each period of continuous 4 months of service.. The employment Act stipulates that the time to take annual leave has to be agreed upon between the parties. This is only but a minimum threshold. As such, it is open for employers to provide annual leave days which exceed the statutory minimum threshold.

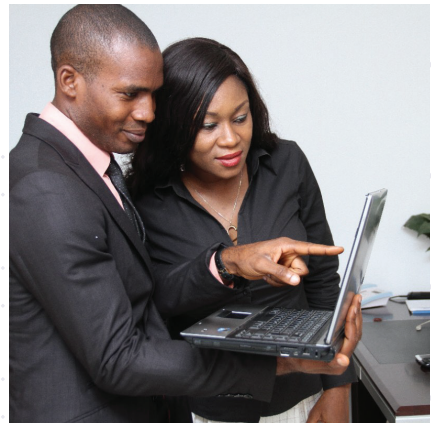


## Public officers;

Under the Public Service Standing Orders, Annual leave is a right only applicable to a public officer employed on full time basis and when due, it shall be obligatory.

Unlike in the private sector, annual leave for public officers depends on the salary scale.

In the Public Service, Public Officers on U2 scale and below enjoy annual leave of thirty six (36) days whereas those on U8 scale enjoy annual leave of twenty four (24) days.



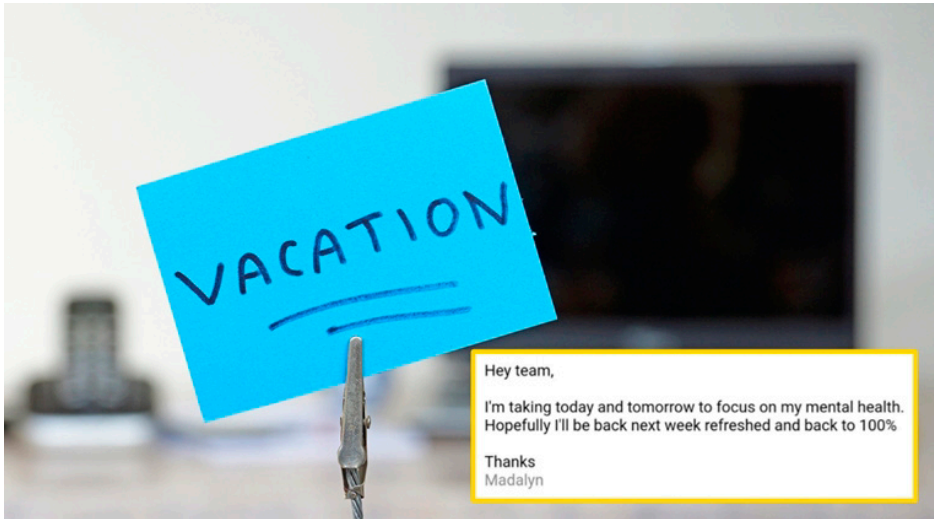
## Grant of leave

Annual leave must be applied for in order for one to benefit from it. Where the employer refuses to grant leave, he or she should pay in lieu of leave, however it should be noted that any agreement to relinquish or forgo an employee's right to annual leave for payment in lieu of leave is null and void. Further, failure to apply for leave within a given year implies that the employee has forfeited his right to leave and cannot claim for it after termination.

Numerous decisions by the Industrial Court in Uganda have upheld the above principles. In *Mwaka v Road Master Cycles (U) Ltd* (Labour Dispute Claim No. 155/2014), it was stated that, ordinarily an employee is expected to apply for leave and chose either to take it or be paid in lieu and if he does not apply for leave when he is aware of his right of leave, the presumption is that he has voluntarily denied himself leave and he cannot claim it unless his employer consents to it.

It was further held in *Nyakabwa J. Abwoli Vs Security 2000 Ltd* (Labour Dispute No.108 of 2014) that leave for an employee is an entitlement that can only be taken away expressly by the employee himself or herself. The mere fact that an employee has not applied for leave, unless embedded in the Human Resource manual or otherwise brought to the attention of the employee, does not work against him. This is the reason some employers remind their employees to take leave.

It is important to note that an employer cannot unreasonably send an employee on forced leave. In *Kyazze Vs Busoga College Mwiri* (Labour Dispute Reference No. 143 of 2016) it was held that, although an employee is entitled to leave in accordance with the Employment Act, such leave is ordinarily granted when the employee applies for it and unless there are special circumstances, an employer may not force an employee to go on leave. Unless there is evidence to the fact that the employee applied for leave and the employer refused to grant the same, it is a given in our view that the employee was comfortable without leave and therefore he is estopped from claiming payment in lieu of the same once the he/she is terminated.



It is therefore important for every employer desirous of embedding such a power within its employment structure to;

- i. Expressly provide for the circumstances and authority under which it can send an employee on forced leave in its Human Resources Manual; and/or
- ii. Expressly provide that an employee's failure to apply for leave within the calendar year amounts to forfeiture of the same.

The failure to provide for such circumstances will potentially render any attempt at sending an employee on forced leave or informing him/her of their forfeiture of their annual leave in the event that they choose to apply for payment in lieu of leave, to be construed as an arbitrary disciplinary action.

In addition to the above, it should be noted that the onus is placed on the employer to inform the employees of their right to take annual leave. In the absence of this, an employee's failure to apply for leave will not work against him/her as it may be argued that the employee was not aware of such right.



## Leave planning by the employer

The purpose of applying for leave is for proper planning by the employer. This principle was emphasized by the Industrial Court in *Lamunu v Krotchet Employees SACCO and Krotchet Kids Uganda* (Labour Dispute Claim NO.006/2016) [2017]. The Court held that whereas leave is a right of an employee, for planning purposes however, an employee is always expected to apply for his/ her leave at a certain period during a calendar year so as to allow the employer arrange for somebody to perform the duties of the employee on leave. In the absence of the employee showing interest in taking his/ her leave when he or she is aware of this right, he or she is taken to have willingly forfeited his or her entitlement.

Leave being an entitlement to the employee imposes a duty on the employer to put systems in place to ensure that employees take their leave once they apply for it. In *Mbiika Vs Centenary Bank* (Labour Dispute Claim No.023 of 2014) [2018], it was held that, leave within a calendar year is an entitlement to an employee. This means whether any organization has a leave roster or leave plan or not, an employee will have his leave during a calendar year. It is the duty of the employer to put a system in place that ensures that each employee takes leave in a given calendar year and the absence or weakness of such a system does not at all affect the entitlement of the employee to his leave.

It should be noted that grant of leave is a fundamental term of the contract and refusal to grant it constitutes a breach which may result in constructive dismissal by the employer. In *Mbiika Vs Centenary Bank*, it was held that grant of leave is not only an entrenched term of the contract of service but a fundamental term in such a contract. Following the decision in *Nyakabwa J. Abwooli Vs Security 2000 Ltd*, the Court held that, failure to grant leave to the applicant within the calendar year made the respondent guilty of conduct that went to the root of the contract and therefore entitled the claimant to terminate the contract under section 65 (1) (c) of the Employment Act by resignation which necessarily was not voluntary and therefore constituted constructive dismissal.



## What alternatives are available to the employee in lieu of leave?

In cases where employees fail to take up their annual leave entitlement, the employer is only obligated to pay in lieu of leave where he or she refuses to grant the leave after the employee has applied for it. This was the finding of the Industrial Court in *Ochwo v Appliance World Limited*.

The alternative option is for the employer to defer the employee's leave to another year. However as held in the *Mbiika Vs Centenary Bank* case, an employer can only defer an employee's annual leave to the following calendar year with the consent of the employee and in such a case the employee will take leave for both the previous calendar year and the current calendar year.



## Can an employee be terminated for applying for and or taking leave?

Section 75(b) of the Employment Act (supra) provides that an employee cannot be terminated for proposing or taking leave to which such employee is entitled. In *Florence Mufumba Vs. UDB Bank* (Labour Dispute Claim No.138/2014), it was held that, "where an employee is entitled to take leave and his or her employer is made aware of the dates and of the intention of the said employee to take the leave, and the employer raises no objection as to the proposed dates, once such employee takes his or her leave, the employer is estopped from denying that such leave was authorized. It follows therefore that the said employer cannot impose disciplinary action against such employee"



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